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Abortion foes put grand jury on case

Kansas panel seated via petition probes late-term provider

By Judy Peres

Tribune reporter

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WICHITA, Kan.

The latest skirmish in the abortion wars is being fought not on the sidewalk outside a clinic, but in the ornate jury room of a 19th Century courthouse.

Kansas is one of a handful of states that allow citizen-initiated grand juries to investigate possible crimes. And anti-abortion activists have invoked a little-used law to get a grand jury impaneled that they hope will put a local abortion provider out of business and behind bars.

Women's Health Care Services is one of the last remaining clinics in the U.S. where women can terminate pregnancies in the late-second and third trimesters. The Wichita facility draws patients from all over, which enrages local anti-abortion groups.

"People hate the idea of being known as the late-term abortion capital of the world," said David Gittrich of Kansans for Life. So when state prosecutors and legislators did not take strong action against the clinic's owner, Dr. George Tiller, "we put on a full-court press."

In 2 1/2 weeks last summer, Kansans for Life collected 6,923 verified signatures on petitions demanding that the district court of Sedgwick County summon a grand jury to investigate alleged illegal abortions performed at Tiller's clinic. Under state law, they needed fewer than 2,500, or 2 percent of the county's voters.

Gittrich says his group had to act because the state was not doing anything to enforce a 1998 Kansas law outlawing abortions after 22 weeks gestation if the fetus could survive outside the womb. Under the law, it is a crime to abort a viable fetus unless the pregnant woman's life is in danger or continuing the pregnancy would cause "a substantial and irreversible impairment of a major bodily function."

The law also requires a second, independent physician to confirm that the woman's health is at risk.

According the state health department, 11,221 abortions were reported in Kansas in 2006, 233 of them



involving viable fetuses.

Abortion opponents charge that Tiller sometimes does post-viability abortions when the only reported threat to the woman's health is depression or anxiety. After years of investigations, the state charged Tiller with 19 misdemeanors in June 2007. The charges allege he had an improper financial relationship with the doctor who provided the second opinion -- not that he performed illegal abortions.

The misdemeanor charges are still pending, but anti-abortion groups say they don't go nearly far enough.

Calling Wichita the "front line" in the abortion battle, Cheryl Sullenger of Operation Rescue said, "Nowhere else is an abortionist so blatantly violating the law."

Patient record subpoenas

One of the grand jury's first acts was to subpoena medical records of about 2,000 patients who had sought abortions at Women's Health Care Services since 2003 for pregnancies of more than 22 weeks. The subpoenas said the clinic could redact the patients' names and other identifying information. But lawyers for Tiller and his patients -- who are fighting the subpoenas -- said the disclosures still would be a gross violation of patients' right to privacy.

"I don't need the worst time in my life sprawled across the desks of people I have no idea who they are or what they want," said a former patient who is among those challenging the subpoenas.

The woman, who spoke on condition that she be identified as "Jane Doe," said she discovered halfway through her pregnancy that her unborn baby had a serious heart defect and only a slim chance of surviving the birth. Although she and her husband had never contemplated abortion, Doe said, the idea of watching their baby suffer was even more unthinkable.

Doe, a 41-year-old office worker with three children, said Tiller was the only doctor who would terminate her pregnancy and that she's grateful for the "very compassionate, very understanding" care she got at his clinic.

On Tuesday, the Kansas Supreme Court temporarily blocked the grand jury from obtaining the records of Doe and the other patients. The court gave the judges overseeing the grand jury until Monday to file objections to the temporary stay.

Dan Monnat, one of Tiller's attorneys, called the grand jury a "vigilante" effort: "A very small group of people can launch a petition drive and force a criminal investigation based on false claims." He noted that only five other states allow citizens to convene grand juries: Nebraska, Oklahoma, New Mexico, North Dakota and Nevada.

But Ron Allen of Northwestern University Law School, an expert in constitutional law and criminal procedure, sees nothing wrong with citizen-initiated grand juries.

"The initial conception of the grand jury," Allen said, "was precisely that it could be a collection of laymen to act as another check on government -- on government corruption or incompetence or overreaching."

Judge Michael Corrigan, chief judge of the Sedgwick County judicial district, called the grand jury a "powerful tool" because it can investigate whatever it chooses.

The job of the 15 jurors, he said, is to determine whether there is probable cause to file charges. They set their own schedule and they meet in the Historic Courthouse, a Victorian Renaissance structure. They can subpoena records and summon witnesses.

Corrigan appointed a retired judge to oversee the grand jury, but that person is not supposed to influence the direction of their investigation. Jury members were selected from a pool of people randomly selected from voter lists.

Corrigan said the tool is used only rarely -- mostly to look into alleged violations of abortion and obscenity laws.

Another grand jury is investigating a Planned Parenthood clinic near Kansas City based on a citizens' petition spearheaded by Operation Rescue. In 2006 Tiller was the target of a grand jury convened by Kansans for Life. That one did not vote to bring charges.

A target for decades

Tiller, who drives a bulletproof SUV, has drawn the wrath of the anti-abortion movement for decades. His clinic, a windowless fortress, was firebombed in 1985, and he was shot in 1993, Monnat said. These days an Operation Rescue truck is parked opposite the clinic gate, its panels covered with huge photographs of a bloody, dismembered fetus.

Dozens of white wooden crosses had been pounded into the sod of the parkway, representing "the unknown babies who have been killed here," said a lone protester, Donna Lampkin.

Jane Doe remembers being confronted by similar protesters when she arrived for her abortion.

"I don't think those people realize what they're doing to us," she said.

"I'm not the mother of three children, I'm the mother of four; I just don't have one with me. I don't regret what I did. [But] I'll live with the tears and pain for the rest of my life."

jperes@tribune.com

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