Things are changing at the Supreme Court

“Chances are that abortion rights cases will look very different very soon.” That is the cautious assessment of Thomas H. Fisher, solicitor general of Indiana – one of 20 states joining in an amicus brief urging the Supreme Court to uphold a Louisiana law restricting abortion. A less cautious view is that this case has the potential to be a turning point in America’s half-century-long abortion war.

The Supreme Court on March 4 will hear oral arguments in the case *June Medical Services, LLC v. Gee*. June Medical Services operates an abortion clinic in Louisiana and is joined in its suit by two anonymous doctors who do abortions. Gee is Dr. Rebekah Gee, the former secretary of Louisiana’s Department of Health.

At issue is a law passed by the state legislature in 2014 requiring that a doctor performing abortions have admitting privileges at a hospital no more than 30 miles away. The court’s decision is expected before its present term ends in late June.

Louisiana argues that the law is a reasonable way to protect women who undergo abortions. Opponents call it a not-too-subtle attempt to make abortions harder to get, thereby imposing, in the Supreme Court’s language in an earlier case, an “undue burden” on women seeking something the court says the Constitution gives them a right to.

The case has generated intense interest, with more than 80 friend of the court briefs filed a month before the oral arguments. Supporters of abortion fear it will pave the way for even tighter restrictions on abortion and eventually to the undoing – in fact, if not necessarily in law – of *Roe v.*

Wade, the Supreme Court's original 1973 decision legalizing abortion. Opponents of abortion hope it does exactly that.

A district court, citing prior Supreme Court decisions, held that the admitting privileges law is unconstitutional, but the U.S. Court of Appeals for the Fifth Circuit upheld it, saying it "promotes the well-being of women." Posing a major obstacle to the law is a 2016 Supreme Court decision that overturned a virtually identical Texas statute.

But Louisiana contends there are significant differences, the most significant – though unspoken – being the makeup of the Supreme Court. Since 2016, two new justices have come on board – Neil Gorsuch, replacing the late, pro-life Antonin Scalia, and Brett Kavanaugh, succeeding pro-choice Anthony Kennedy.

The votes of four justices are needed to get a case onto the Supreme Court's docket. June Medical Services almost certainly received the votes of Gorsuch and Kavanaugh, as well as Justices Clarence Thomas and Samuel Alito. Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor and Elena Kagan no less certainly were opposed.

That leaves Chief Justice John Roberts – and in 2016 he opposed overturning the Texas statute that is now described as virtually identical to the Louisiana law. If Roberts still holds that view, that adds up to a five-justice majority to uphold the statute.

There is, however, another possibility: The same five justices could simply dismiss the case on the grounds that the abortion provider and the anonymous doctors, who claim to represent the interests of hypothetical women seeking hypothetical abortions, lack legal standing to sue. Although pro-lifers would be disappointed, the justices might consider this a prudent outcome in an election year. So might others who favor an incremental approach to chipping away at the structure of pro-abortion legal precedent put in place by the friends of

abortion since *Roe v. Wade*. Whatever happens, Solicitor General Fisher is right – things are changing at the Supreme Court.

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