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Women's Health and Abortion Rights: Whole Woman's Health v Hellerstedt

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VIEWPOINT

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Whole Woman's Health v Hellerstedt

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Nearly a quarter century ago, the Supreme Court asked pro-choice and right-to-life advocates "to end their national division by accepting a common mandate rooted in the Constitution."[1] Nothing of the sort materialized. If anything, the social and political battles intensified, with states enacting 1074 abortion restrictions (**Table**).[2] The Court has not considered various appeals in the face of an avalanche of legislation, but on June 27, 2016, it struck down 2 onerous restrictions on physicians and clinics offering abortion services.

Whole Woman's Health v Hellerstedt

In 2013, Texas required physicians conducting abortions to obtain admitting privileges at local hospitals and licensed abortion facilities to meet the standards of ambulatory surgical centers.[3] The law solely targeted abortion services, not medical practices with equal or greater risk. For example, childbirth is 14 times more likely than abortion to result in death,[4] but Texas permits midwives to oversee home deliveries. Stephen Breyer, writing for a 5-3 majority, held that the restrictions failed to offer "medical benefits sufficient to justify the burdens on access. Each places a substantial obstacle in the path of women seeking a previability abortion, each constitutes an undue burden on abortion access, and each violates the federal Constitution."[3]

Since *Roe v Wade* (1973), the Court has afforded women the constitutional right to abortion before fetal viability. In *Planned Parenthood of Southeastern Pennsylvania v Casey* (1992), however, the Court balanced women's right to choose with states' valid interests in protecting fetuses. Abortion regulations cannot have the purpose or effect of imposing an "undue burden," defined as a "substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability."[1]

Many abortion regulations purportedly safeguard women's health. *Whole Woman's Health* refused to defer to legislative judgments but demanded good evidence of medical benefit. Justice Breyer reasoned that no evidence existed that Texas' restrictions "would have helped even one woman obtain better treatment."[3] Good evidence, however, existed that the law significantly reduced access to services,[5,6] perhaps increasing risks from unsafe abortions.

This decision now requires states to present evidence that burdens placed on abortion access are justified by legitimate concerns for women's health.[3] The evidentiary requirement will bar states from using health as a pretext for abortion restrictions. The most immediate effect will be on the other 10 states with laws requiring admitting privileges at local hospitals and 23 states with laws imposing surgery center standards,[2] with the decision affecting the landscape of abortion across the country.

Effect on Abortion Access

Whole Woman's Health will significantly expand women's access to abortions. Had the Texas admitting-privileges requirement remained in force, just 22 of the 41 abortion clinics would have continued to operate[5]; outside Texas's major cities, 11 of 13 existing clinics would have closed.[5] Requiring admitting privileges also would result in sharp declines in physicians performing abortions; after enforcement of the requirement, the number of Texas physicians providing abortion declined by 42%.[6] Had the ambulatory surgical center mandate also continued in force, only 10 clinics would have remained open in the state, 1 operating with limited capacity.[7]

Overall, the Texas law would have forced rural women to travel long distances, wait longer, and incur higher costs to exercise their constitutional rights. For example, there would not have been a single clinic for 500 miles from San Antonio to New Mexico.[7] The law also could have affected major cities; in Dallas, wait times for abortion consultations increased from 5 to 20 days following the law's passage.[6]

Whole Woman's Health also could expand abortion access nationally. Of the 10 states with admitting privileges mandates, 6 have laws that are already blocked (Alabama, Kansas, Louisiana, Mississippi, Oklahoma, Wisconsin) and 4 states have laws that will likely be struck down (Missouri, North Dakota, Tennessee, Utah).[2] Among 23 states with ambulatory surgical center requirements, 2 have laws that are blocked (Kansas and Tennessee) and 4 have particularly burdensome standards (Michigan, Missouri, Pennsylvania, Virginia).[2]

The new evidentiary standard in this ruling will force states to demonstrate that abortion restrictions confer medical benefits to women that outweigh barriers to service. It has yet to be seen how this decision will apply to antiabortion statutes justified by other states' interests, such as in protecting potential life.

Women's Health, Rights, and Dignity

Reproductive health is integral to women's overall health. Abortions are extremely safe, with less than 0.3% of patients experiencing complications requiring hospitalization.[8] Legal abortions in the first trimester have mortality risks of only 4 per million, with mortality from childbirth 14 times higher.[4]

Placing obstacles in women's paths can significantly increase health risks, potentially delaying access to abortions into the second trimester,[5] while forcing others to pursue unsafe and unregulated abortions from unauthorized practitioners or self-treatment. Moreover, abortion restrictions often have a discriminatory effect on poor women and those who live in rural areas. For instance, in Texas, the border communities of El Paso and the Rio Grande Valley

Table. State Abortion Restrictions in Effect[a]

Type of Restriction (Sample Variations)	No. of States With Restriction(s) (Blocked/Enjoined)	Pending Litigation on Restriction(s)
Target: Medical Procedures		
Gestational limits (limiting abortion after viability; limiting abortion at specific gestational age)	43	
Medication abortions (requiring clinicians performing medication abortions to be licensed physicians; prohibiting use of telemedicine)	37	*Planned Parenthood Arizona v Humble* (Arizona) *Planned Parenthood of Indiana and Kentucky, Inc v Commissioner, Indiana State Department of Health et al* (Indiana) *Oklahoma Coalition for Reproductive Justice v Cline* (Oklahoma)
"Partial-birth" abortions	19 (13)	
For specific reasons (prohibiting abortion for reason of sex or race; or abortion when fetus has genetic anomaly)	8 (2)	*National Association for the Advancement of Colored People, Maricopa County Branch, National Asian Pacific American Women's Forum v Tom Horne, et al* (Arizona) *Planned Parenthood of Indiana and Kentucky, Inc et al v Commissioner, Indiana State Department of Health et al* (Indiana)
Second-trimester method (banning dilation and evacuation procedure)	1 (3)	*West Alabama Women's Center v Miller* (Alabama) *Hodes & Nauser MDs, PA, et al v Schmidt & Howe* (Kansas) *Nova Health Systems v Cline et al* (Oklahoma)
Target: Hospitals, Clinics, and Physicians		
Religious refusals (refusal by provider; refusal by institution)	45	
Ambulatory surgical center standards	21 (2)	*Adams & Boyle, PC et al v Slatery, et al* (Tennessee) *Hodes & Nauser, MDs, PA et al v Robert Moser, MD et al* (Kansas)
Hospital admitting privileges	4 (6)	*June Medical Services LLC v Kliebert* (Louisiana) *Hodes & Nauser, MDs, PA et al v Robert Moser, MD et al* (Kansas) *Burns v Cline* (Oklahoma) *Adams & Boyle, PC et al v Slatery, et al* (Tennessee)
Target: Women		
Parental involvement (parental consent, notification, or both in minor's abortion decision; judicial bypass procedure)	38 (5)	*Reproductive Health Services, et al v Luther Strange et al* (Alabama) *Planned Parenthood of the Great Northwest, et al v State of Alaska* (Alaska)
State-mandated counseling (specifying information woman must be given, eg, risks of abortion, risks of continuing pregnancy; development and provision of written materials)	35	*Planned Parenthood Arizona, Inc et al v Brnovich, Christ, et al* (Arizona) *Hodes & Nauser MDs, PA, et al v Schmidt, et al (Kansas)*
Waiting periods (length of time required between counseling and abortion procedure)	27 (3)	*Gainesville Woman Care LLC, et al v State of Florida, et al* (Florida) *Hodes & Nauser MDs, PA, et al v Schmidt, et al* (Kansas) *June Medical Services LLC v Gee* (Louisiana) *Nova Health Systems v Cline et al* (Oklahoma)
Ultrasound requirements (provision of ultrasound services; provision of opportunity to view ultrasound)	25	*Planned Parenthood of Indiana and Kentucky, Inc v Commissioner, Indiana State Department of Health et al* (Indiana)
Target: Funding and Reimbursement		
Prohibition of use of public funding (exceptions for life endangerment, rape, and incest; exceptions for fetal impairment or physical health)	32	*Planned Parenthood of the Great Northwest v Streur, et al* (Alaska) *Mabel Wadsworth Women's Health Center v Mayhew* (Maine)
Restriction of coverage by private insurance (all private insurance plans; specific to health exchanges; exceptions for life endangerment, rape, and incest)	25 (1)	

[a] Adapted from information published by the Guttmacher Institute.[2]

(among Texas's poorest) would have been left with only 1 clinic operating at limited capacity. Border regions have high concentrations of Latinas, who face geographic, transportation, economic, and linguistic barriers. Some black women have similar economic barriers, as well as high rates of unintended pregnancy.

Constitutional rights are intended to safeguard human dignity. In a political climate sometimes hostile to reproductive freedoms, women seeking abortion can feel stigma, shame, and isolation. Physicians can also experience stigma and possibly fear from threats of violence. Medically unnecessary restrictions hinder physicians from providing respectful, compassionate, and dignified services.

In the wake of *Whole Woman's Health*, states may continue to pass and enforce legislation limiting whether, when, and under what circumstances women may obtain abortions. Courts now have a clear mandate to consider the consequences of these laws for women, placing their health, rights, and dignity at the center of public discourse.

ARTICLE INFORMATION

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