Whole Woman's Health v. Hellerstedt, 579 U.S. ___ (2016)*

FACTS [These are derived from the syllabus of the slip opinion]

In 2013, the Texas Legislature enacted House Bill 2 (H. B. 2), which contains the two provisions challenged here. The "admitting-privileges requirement" provides that a "physician performing or inducing an abortion . . . must, on the date [of service], have active admitting privileges at a hospital . . . located not further than 30 miles from the" abortion facility. The "surgical-center requirement" requires an "abortion facility" to meet the "minimum standards . . . for ambulatory surgical centers" under Texas law. Before the law took effect, a group of Texas abortion providers filed the Abbott case, in which they lost a facial challenge to the constitutionality of the admitting-privileges provision. After the law went into effect, petitioners, another group of abortion providers (including some Abbott plaintiffs), filed this suit, claiming that both the admitting-privileges and the surgical-center provisions violated the Fourteenth Amendment, as interpreted in [*Planned Parenthood v.*] Casey. [...]

[T]he District Court made extensive findings, including, but not limited to: as the admitting-privileges requirement began to be enforced, the number of facilities providing abortions dropped in half[;] the number of facilities would drop to seven or eight if the surgical-center provision took effect[.] [B]efore H. B. 2's passage, abortion was an extremely safe procedure with very low rates of complications and virtually no deaths; it was also safer than many more common procedures not subject to the same level of regulation[.] [...]

The Fifth Circuit reversed in significant part[.]

JUSTICE BREYER delivered the opinion of the Court.

In *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833, 878 (1992) , a plurality of the Court concluded that there "exists" an "undue burden" on a woman's right to decide to have an abortion, and consequently a provision of law is constitutionally invalid, if the "*purpose or effect" of the provision "is to place a substantial obstacle* in the path of a woman seeking an abortion before the fetus attains viability." (Emphasis added.) The plurality added that "[u]nnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on the right." Ibid.

We must here decide whether two provisions of Texas' House Bill 2 violate the Federal Constitution as interpreted in Casey. The first provision, which we shall call the "*admitting-privileges requirement*," says that

> "[a] physician performing or inducing an abortion . . . must, on the date the abortion is performed or induced, have active admitting privileges at a hospital that . . . is located not further than 30 miles from the location at which the abortion is performed or induced." Tex. Health & Safety Code Ann. §171.0031(a) (West Cum. Supp. 2015).

The second provision, which we shall call the "*surgical-center requirement*," says that

*Note: This majority opinion has been edited from the original text by Dr. Travis Braidwood for classroom use. The full case text can be found here: < https://supreme.justia.com/cases/federal/us/579/15-274/ >.

> "the minimum standards for an abortion facility must be equivalent to the minimum standards adopted under [the Texas Health and Safety Code section] for ambulatory surgical centers." Tex. Health & Safety Code Ann. §245.010(a).

We conclude that neither of these provisions offers medical benefits sufficient to justify the burdens upon access that each imposes. Each places a substantial obstacle in the path of women seeking a previability abortion, each constitutes an undue burden on abortion access, Casey, supra, at 878 (plurality opinion), and each violates the Federal Constitution. Amdt. 14, §1. [...]

III

Undue Burden—Legal Standard

We begin with the standard, as described in Casey. We recognize that the "State has a legitimate interest in seeing to it that abortion, like any other medical procedure, is performed under circumstances that insure maximum safety for the patient." *Roe v. Wade*, 410 U. S. 113, 150 (1973) . But, we added, "a statute which, while furthering [a] valid state interest, has the effect of placing a substantial obstacle in the path of a woman's choice cannot be considered a permissible means of serving its legitimate ends." Casey, 505 U. S., at 877 (plurality opinion). Moreover, "[u]nnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on the right." Id., at 878. [...]

The rule announced in *Casey*, however, requires that courts consider the burdens a law imposes on abortion access together with the benefits those laws confer. [...]The Court of Appeals' approach simply does not match the standard that this Court laid out in Casey, which asks courts to consider whether any burden imposed on abortion access is "undue."

The statement that legislatures, and not courts, must resolve questions of medical uncertainty is also inconsistent with this Court's case law. Instead, the Court, when determining the constitutionality of laws regulating abortion procedures, has placed considerable weight upon evidence and argument presented in judicial proceedings. [...] [I]n *Gonzales* the Court, while pointing out that we must review legislative "fact-finding under a deferential standard," added that we must not "place dispositive weight" on those "findings." 550 U. S., at 165. *Gonzales went on to point out that the "Court retains an independent constitutional duty to review factual findings where constitutional rights are at stake*." Ibid. (emphasis added). Although there we upheld a statute regulating abortion, we did not do so solely on the basis of legislative findings explicitly set forth in the statute[.]

Unlike in *Gonzales*, the relevant statute here does not set forth any legislative findings. [...] As we shall describe, the District Court did so here. It did not simply substitute its own judgment for that of the legislature. It considered the evidence in the record—including expert evidence[.] [...]

IV

Undue Burden—Admitting-Privileges Requirement

[...] Before the enactment of H. B. 2, doctors who provided abortions were required to "have admitting privileges or have a working arrangement with a physician(s) who has admitting privileges at a local hospital in order to ensure the necessary back up for medical complications." [...] The new law changed this requirement by requiring that a "physician performing or inducing an

abortion . . . must, on the date the abortion is performed or induced, have active admitting privileges at a hospital that . . . is located not further than 30 miles from the location at which the abortion is performed or induced." Tex. Health & Safety Code Ann. §171.0031(a). [...]

The purpose of the admitting-privileges requirement is to help ensure that women have easy access to a hospital should complications arise during an abortion procedure. Brief for Respondents 32–37. But the District Court found that it brought about no such health-related benefit. [...]

We have found nothing in Texas' record evidence that shows that, compared to prior law (which required a "working arrangement" with a doctor with admitting privileges), the new law advanced Texas' legitimate interest in protecting women's health.[†] [...]

At the same time, the record evidence indicates that the admitting-privileges requirement places a "substantial obstacle in the path of a woman's choice." *Casey*, 505 U. S., at 877 (plurality opinion). [T]he number of facilities providing abortions dropped in half, from about 40 to about 20. 46 F. Supp. 3d, at 681. Eight abortion clinics closed in the months leading up to the requirement's effective date. [...] Eleven more closed on the day the admitting-privileges requirement took effect. [...]

V

Undue Burden—Surgical-Center Requirement

Texas law required abortion facilities to meet a host of health and safety requirements. Under those pre-existing laws, facilities were subject to annual reporting and recordkeeping requirements[,] a quality assurance program[,] personnel policies and staffing requirements[,] physical and environmental requirements[,] infection control standards[,] disclosure requirements[,] patient-rights standards[,] and medical- and clinical-services standards[.] These requirements are policed by random and announced inspections [...] as well as administrative penalties, injunctions, civil penalties,and criminal penalties for certain violations[.]

H. B. 2 added the requirement that an "abortion facility" meet the "minimum standards . . . for ambulatory surgical centers" under Texas law. §245.010(a) (West Cum. Supp. 2015). The surgical-center regulations include, among other things, detailed specifications relating to the size of the nursing staff, building dimensions, and other building requirements.[‡] [...]

The record makes clear that the surgical-center requirement provides no benefit when complications arise in the context of an abortion produced through medication. That is because, in such a case, complications would almost always arise only after the patient has left the facility. [...] The total number of deaths in Texas from abortions was five in the period from 2001 to 2012, or about

[†]We add that, when directly asked at oral argument whether Texas knew of a single instance in which the new requirement would have helped even one woman obtain better treatment, Texas admitted that there was no evidence in the record of such a case.

[‡]Facilities must include a full surgical suite with an operating room that has "a clear floor area of at least 240 square feet" in which "[t]he minimum clear dimension between built-in cabinets, counters, and shelves shall be 14 feet." §135.52(d)(15)(A). There must be a preoperative patient holding room and a postoperative recovery suite. The former "shall be provided and arranged in a one-way traffic pattern so that patients entering from outside the surgical suite can change, gown, and move directly into the restricted corridor of the surgical suite[.]" [...] Surgical centers must meet numerous other spatial requirements, see generally §135.52, including specific corridor widths, §135.52(e)(1)(B)(iii). Surgical centers must also have an advanced heating, ventilation, and air conditioning system, §135.52(g)(5), and must satisfy particular piping system and plumbing requirements, §135.52(h). Dozens of other sections list additional requirements that apply to surgical centers. [...]

one every two years (that is to say, one out of about 120,000 to 144,000 abortions). Id., at 272. Nationwide, childbirth is 14 times more likely than abortion to result in death, ibid., but Texas law allows a midwife to oversee childbirth in the patient's own home.[§] [...]

At the same time, the record provides adequate evidentiary support for the District Court's conclusion that the surgical-center requirement places a substantial obstacle in the path of women seeking an abortion.[...]

[I]n the face of no threat to women's health, Texas seeks to force women to travel long distances to get abortions in crammed-to-capacity superfacilities. Patients seeking these services are less likely to get the kind of individualized attention, serious conversation, and emotional support that doctors at less taxed facilities may have offered. Healthcare facilities and medical professionals are not fungible commodities. Surgical centers attempting to accommodate sudden, vastly increased demand [...] may find that quality of care declines. [...]

Finally, the District Court found that the costs that a currently licensed abortion facility would have to incur to meet the surgical-center requirements were considerable, ranging from $1 million per facility (for facilities with adequate space) to $3 million per facility[.]

For these reasons the judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion

It is so ordered.

[§]Colonoscopy, a procedure that typically takes place outside a hospital (or surgical center) setting, has a mortality rate 10 times higher than an abortion. Id., at 276–277; see ACOG Brief 15 (the mortality rate for liposuction, another outpatient procedure, is 28 times higher than the mortality rate for abortion)