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US Supreme Court strikes down Texas anti-abortion law

By John Burton

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The United States Supreme Court brought its annual term to a close with a 5-3 decision invalidating two provisions of a recent Texas law that deliberately imposed extreme regulatory requirements on abortion clinics with the goal of shutting them down.

Hundreds of demonstrators favoring each side in the case jammed the plaza in front of the Supreme Court Monday morning in anticipation of the ruling. Their chants were audible inside the courtroom as the judges were announcing their opinions.

Justice Stephen Breyer wrote for the majority in *Whole Woman's Heath v. Hellerstedt*, joined by Associate Justices Anthony Kennedy, Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan. Chief Justice John Roberts and Justices Clarence Thomas and Samuel Alito dissented.

Whole Woman's Health unambiguously reaffirms *Roe v. Wade*, the landmark 1973 Supreme Court ruling upholding a woman's constitutional right to choose an abortion during the earlier stages of her pregnancy.

Given the five-justice majority, neither the death of Antonin Scalia earlier this year nor the failure of the Senate to confirm Merrick Garland, the successor to Scalia nominated by President Barack Obama, would have affected the outcome.

The decision in *Whole Women's Health* will make it far more difficult for reactionary state legislatures to impose onerous new requirements on both health providers and their patients to prevent women from exercising the fundamental democratic right to terminate a pregnancy.

In 1992, a highly fractured Supreme Court decided *Planned Parenthood v. Casey*, which is generally read to mean that when a law's "purpose or effect...is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability," or in the court's words, the law imposes an "undue burden," it violates the Constitution. Five separate opinions were issued in that case, however, none of them garnering the necessary five votes to establish a binding precedent.

State legislatures have continued to enact new requirements to deter access to abortion services, leading to a proliferation of lawsuits and increased hardships, particularly for working-class women and those living in rural areas. The targeted medical clinics provide a wide range of health services, including contraception and cancer screening, and their closure deprives a large segment of the population, principally women and disproportionately minorities, access to programs that promote general wellness.

Whole Woman's Health challenged a July 2013 Texas statute signed by former Governor Rick Perry that mandated all abortions must be performed in facilities meeting the high standards of an ambulatory surgical center, and only by doctors with admitting privileges at nearby acute-care hospitals. Both requirements have been deemed "medically unnecessary" by the American Medical Association and the American College of Obstetricians and Gynecologists and were clearly intended to shut down as many locations as possible.

Due to the new requirements, the number of medical clinics providing abortion services in Texas plunged almost overnight from 42 to 19, and could have dropped to seven or eight were the law to remain in effect. While a few large clinics would have remained open in metropolitan Austin, Dallas-Fort Worth, Houston and San Antonio, there would be no abortion services provided west or south of San Antonio, a vast geographic area larger than California.

In the crux of his opinion, Breyer demonstrated with hard scientific data that the Texas law was based on sham concerns for women's health. Over an eleven-year span before the surgery center requirements were imposed on abortion providers, there were only five deaths out of more than a half-million procedures. Texas allows far more risky medical procedures, including childbirth and colonoscopies, to be performed outside of surgery centers.

Less than one-quarter of one percent of all first-trimester abortions have any complication, the number is only slightly higher for the rarer second-trimester abortions, and even fewer require any hospital admission.

One California study determined that only 15 out of almost 55,000 abortion patients required hospitalization the day of the procedure. In those few cases, according to expert testimony, "the quality of care that the patient receives is not affected by whether the abortion provider has admitting privileges at the hospital."

“Texas seeks to force women to travel long distances to get abortions in crammed-to-capacity superfacilities,” Breyer wrote, “less likely to get the kind of individualized attention, serious conversation, and emotional support that doctors at less taxed facilities may have offered.”

Breyer concluded, “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, and each violates the Federal Constitution.”

“When a State severely limits access to safe and legal procedures,” Justice Ginsburg added in a brief concurrence, “women in desperate circumstances may resort to unlicensed rogue practitioners, *faute de mieux*, at great risk to their health and safety,”

In his dissent, Thomas wrote he would have upheld the law because the abortion providers were not entitled to assert the constitutional rights of their patients. Alito and Roberts would have returned the case to the lower courts for more factual findings.

Hillary Clinton, the presumptive Democratic Party nominee for president, used the decision to reinforce her campaign’s orientation to identity politics, calling it a “a victory for women,” and adding, “This fight isn’t over: The next president has to protect women’s health.”

As of this writing, Donald Trump, the presumptive Republican nominee, had not commented on the ruling. Earlier in his campaign he proposed punishing women who obtain abortions.

In another decision issued Monday before the annual summer recess, *McDonnell v. United States*, the Supreme Court unanimously overturned the corruption convictions of Bob McDonnell, a former Republican governor of Virginia, ruling that his prosecution was based on too broad a definition for “official act.” McDonnell opened doors and set up official meetings for Jonnie R. Williams Sr., a businessman who showered McDonnell and his wife with luxury products, loans and vacations.

McDonnell could still be retried under the new, higher standard. The decision, however, makes his case and all others brought against corrupt public officials harder to win.