



REPRODUCTIVE RIGHTS & HEALTH

WHOLE WOMAN'S HEALTH V. HELLERSTEDT: STATES ARE ATTEMPTING TO MAKE IT DIFFICULT - IF NOT IMPOSSIBLE - FOR WOMEN TO ACCESS ABORTION

This term, the Supreme Court is reviewing a case that asks how far states can go in their attempts to make it difficult—or even impossible—for women to exercise their constitutional right to decide whether to have an abortion. The case challenges parts of Texas's clinic shutdown law, known as H.B. 2, which imposes medically unnecessary, burdensome requirements on abortion providers and clinics. If the law is upheld, all but 10 clinics in the second largest state in the country will be forced to close, threatening women's ability to make personal decisions about their lives and health.

States are Passing Abortion Restrictions at an Alarming Rate, Threatening a Woman's Legal Right to Abortion

For over forty years, the U.S. Supreme Court has made it clear that women have a constitutionally protected right to decide whether to obtain an abortion.¹ In 1992, the Supreme Court held that states cannot pass laws that impose an undue burden on that right.² Yet, state lawmakers are trying to make an end run around these protections by advancing laws designed to shut down clinics and make it impossible for women to get the essential reproductive health care they need.

States have passed 288 abortion restrictions in the last five years.³ These restrictions are aimed at trying to prevent women from getting an abortion, even when that means lying to her, delaying her, doing tests she does not need, making it cost more than it should, letting people harass her, and closing nearby clinics.⁴

The Challenged Restrictions of the Texas Law Are Shutting Down Clinics

In 2013, the Texas legislature passed one of these laws, H.B. 2. The law imposes several restrictions on abortion, including requiring providers to obtain medically unnecessary hospital admitting privileges and requiring abortion clinics to meet the licensure requirements of ambulatory surgical centers (ASC).⁵ Leading medical experts and organizations, such as the American Medical Association and the American College of Obstetricians and Gynecologists, oppose these medically unnecessary requirements on women's health care services.⁶

Before H.B. 2, there were more than forty clinics throughout Texas.⁷ Since the law passed, more than half of the state's clinics have closed, leaving some Texas women hundreds of miles from the closest clinic.⁸ If H.B. 2 is upheld, at most ten clinics will remain in the entire state for the 5.4 million women of reproductive age who live there.⁹

The Challenged Restrictions Have Been Stayed - for Now

Following a challenge brought on behalf of healthcare providers in the state, a federal district court struck down the admitting privileges and ASC requirements as unconstitutional.¹⁰ The Court of Appeals for the Fifth Circuit overturned that ruling, ignoring substantial evidence that the law's purported health benefits were nothing more than a pretext to close clinics and block women's access to abortion.¹¹ Following this decision, the Supreme Court stepped in on an emergency basis to stay the Fifth Circuit's decision and temporarily keep the law from being enforced until the Court has a chance to make a decision in the case.¹² While more than half of the state's clinics have already closed, the Supreme Court stay means that many of the existing clinics can remain open while the lawsuit continues.



The Challenged Restrictions of H.B. 2 Make it Difficult—if not Impossible—for Texas Women to Exercise Their Constitutional Right to Abortion, with Harmful Consequences

Texas women have been left with dramatically increased travel times and distances, as well as delays in obtaining care at the few remaining clinics.¹³ Women who ultimately reach a clinic must assume significant costs. Such costs have particularly detrimental effects on low-income women, women of color, women in low-wage jobs, and women who already have children.¹⁴ Many women may be entirely prevented from obtaining an abortion. As a result of the costs and barriers imposed by H.B. 2, many women will face long-term consequences with respect to their financial wellbeing, job security, workforce participation, and educational attainment.

The Challenged Restrictions Impose Substantial Costs on Texas Women Seeking Abortion, Threatening their Economic Security

If the challenged provisions of H.B. 2 are upheld, the clinic closures will impose heavy burdens on women seeking to exercise their constitutional right to obtain an abortion, including traveling drastically long distances to reach a clinic. For example, without clinics in El Paso, a woman from Fort Stockton seeking an abortion in Texas and relying on public transportation would have to pay at least \$120 to take a Greyhound bus roundtrip to San Antonio, with over eleven hours of travel time.¹⁵ If she secures a medication abortion, she must make this round trip twice to receive both medication doses, or else stay overnight with associated costs. A third trip is required if she attends the follow-up appointment that her provider is required to schedule two weeks later.¹⁶ Being forced to travel long distances drives up the indirect costs of getting an abortion, such as child care, time off work, gas or other transportation expenses, and hotel costs.¹⁷

Many women will be forced to delay the procedure while they save enough money for the procedure and the additional expenses imposed by travel. Delays lead to more expensive, riskier procedures. While abortion is safe throughout pregnancy, the risks of medical complications increase with each week.¹⁸ And the costs of abortion increase with each week,¹⁹ catching women in a vicious cycle where they have to try and save more and more money.

If upheld, the substantial costs imposed on women by H.B. 2

threaten women's economic security. Women who have abortions are disproportionately poor.²⁰ For these women, the additional costs impose a particularly heavy burden. And some women, like low-wage workers with inflexible schedules and little ability to absorb extra costs, will be put in an untenable position in which the price of obtaining an abortion is a financial crisis, further entrenching existing economic instability.

The Challenged Restrictions Jeopardize Women's Long-Term Economic Security, Equality, and Opportunity

Some Texas women will never be able to save enough money for the procedure and associated costs because of the restrictions imposed by H.B. 2. This means that if H.B. 2 is allowed to go fully into effect, many women in Texas will be unable to exercise their constitutional right to an abortion.

For those women unable to get an abortion as a result of HB 2, having a child will have drastic consequences for their future opportunity and equality. As the U.S. Supreme Court has held, "The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives."²¹ Forcing a woman to carry a pregnancy to term can have long-term negative consequences with respect to their economic security, workforce participation, and educational opportunities. A study comparing women who terminated a pregnancy to those who wanted but were unable to obtain an abortion found that one year later women denied an abortion were less likely to be employed in a full-time job and more likely to be living below the federal poverty line.²² Women forced to carry a pregnancy to term may also face diminished earnings, interference with their career advancement, disruption of their education, and fewer resources for children they already have.²³

The Impact on Women's Economic Security and Opportunity Reinforces that the Challenged Restrictions of H.B. 2 Violate the Constitution

The challenged provisions of H.B. 2 impede – and in some cases eliminate entirely – a woman's constitutional right to abortion. These restrictions unjustifiably disrupt the lives of women seeking an abortion, with potentially drastic implications for their economic security and opportunity, further entrenching existing inequalities. In *Whole Woman's Health*, the Supreme Court has the opportunity to re-affirm more than four decades of precedent and make clear that laws that impose such heavy burdens are unconstitutional.



- 1 See e.g. *Roe v. Wade*, 410 U.S. 113 (1973). See also *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52 (1976); *Akron v. Akron Ctr. for Reprod. Health, Inc.*, 462 U.S. 416 (1983); *Hodgson v. Minnesota*, 497 U.S. 417 (1990).
- 2 *Planned Parenthood of Southeast Pa. v. Casey*, 505 U.S. 833, 878 (1992).
- 3 *Laws Affecting Reproductive Health and Rights: 2015 State Policy Review*, GUTTMACHER INST. (last visited Feb. 26, 2016), <https://www.guttmacher.org/statecenter/updates/2015/statetrends42015.html>.
- 4 See e.g., H.B. 2253, 2013 Leg., Reg. Sess. (Kan. 2013) (requiring providers to tell women that abortion may increase risk of “premature birth in future pregnancies” and breast cancer); H.B. 465, Gen. Assemb. Session 2015 (N.C. 2015) (enacting a 48 hour mandatory delay); S.B. 371, 118th Gen. Assemb., 1st Reg. Sess. (Ind. 2013) (requiring a woman to undergo an ultrasound before obtaining an abortion); H.B. 1123, 118th Gen. Assemb., 2d Reg. Sess. (Ind. 2014) (prohibiting private health plans from including insurance coverage for abortion); S.B. 1280, 109th Gen. Assemb., 2015 Reg. Sess. (Tenn. 2015) (requiring surgical abortion facilities to be licensed as ambulatory surgical centers). See also *2015 State Level Abortion Restrictions: An Extreme Overreach into Women’s Ability to Access Reproductive Healthcare*, NAT’L WOMEN’S LAW CTR. (Feb. 2016), <http://nwlc.org/resources/2015-state-level-abortion-restrictions-mid-year-extreme-overreach-women%E2%80%99s-ability-access-reproductive-health-care/>.
- 5 H.B. 2, 83d Leg., 2d Called Sess. (Tex. 2013) (codified at TEX. HEALTH & SAFETY CODE ANN. § 171.0031 et seq., § 245.003).
- 6 See Brief for Amici Curiae Am. Coll. Of Obstetricians and Gynecologists, Am. Med. Assoc. et al. in Support of Petitioners *Whole Woman’s Health v. Hellerstedt*, No. 15-274 (U.S. cert granted Nov. 13, 2015).
- 7 Fewer Abortion Clinics in Texas, N.Y. TIMES (June 10, 2015), <http://www.nytimes.com/interactive/2014/08/04/us/shrinking-number-of-abortion-clinics-in-texas.html>.
- 8 Adam Liptak, *Texas Abortion Providers Ask Supreme Court to Reverse Ruling on Clinics*, N.Y. TIMES (Sept. 3, 2015), <http://www.nytimes.com/2015/09/04/us/politics/supreme-court-ruling-abortion-clinics-texas.html>; see also Brief for Petitioners at 55-56, *Whole Woman’s Health v. Hellerstedt*, No. 15-274 (U.S. cert granted Nov. 13, 2015); see also Olga Khazan, *The Cost of Driving to an Abortion*, THE ATLANTIC (Oct. 28, 2014), <http://www.theatlantic.com/health/archive/2014/10/the-cost-of-driving-to-an-abortion/381985/>.
- 9 *Id.*
- 10 *Whole Woman’s Health v. Lakey*, 46 F.Supp.3d 673 (W.D. Tex. 2014).
- 11 *Whole Woman’s Health v. Cole*, 790 F.3d 563 (5th Cir. 2015).
- 12 *Whole Woman’s Health v. Cole*, 135 S. Ct. 2923 (2015) (mem.).
- 13 Texas Policy Evaluation Project, *Abortion Wait Times in Texas at 2* (Nov. 25, 2015), <https://utexas.app.box.com/AbortionWaitTimeBrief>
- 14 See Brief of Amici Curiae Nat’l Women’s Law Ctr. et al. in Support of Petitioners at 22-26, *Whole Woman’s Health v. Hellerstedt*, No. 15-274 (U.S. cert granted Nov. 13, 2015).
- 15 Greyhound, *Book a Trip*, <https://www.greyhound.com/en> (last visited March 1, 2016).
- 16 TEX. HEALTH & SAFETY CODE ANN. § 171.063(e) (West 2013) (requiring that physicians schedule follow-up visits after administration of an abortion-inducing drug).
- 17 See Brief of Amici Curiae Nat’l Women’s Law Ctr. at 16-18.
- 18 Linda A. Bartlett et al., *Risk Factors for Legal Induced Abortion-Related Mortality in the United States*, 103 *Obstetrics & Gynecology* 729, 731 (2004).
- 19 Jenna Jerman & Rachel K. Jones, *Secondary Measures of Access to Abortion Services in the United States, 2011 and 2012*, 24 *Women’s Health Issues* e419, e421-22 (2014)
- 20 Rachel K. Jones & Megan L. Kavanaugh, *Changes in Abortion Rates Between 2000 and 2008 and Lifetime Incidence of Abortion*, 117 *Obstetrics & Gynecology* 1358, 1362 (2011).
- 21 *Casey*, 505 U.S. at 856.
- 22 Diana Greene Foster, *Presentation at the American Public Health Association Annual Meeting & Expo: Socioeconomic Consequences of Abortion Compared to Unwanted Birth* (Oct. 30, 2012), <https://apha.confex.com/apha/140am/webprogram/Paper263858.html>.
- 23 See Brief of Amici Curiae Nat’l Women’s Law Ctr. at 36-37.

