



## Whole Woman<sup>®</sup>'s Health Et Al. V. Hellerstedt, Commissioner, Texas Department Of State Health Services, Et Al.

579 U.S. \_\_\_\_ (2016)

**Country:** United States

**Region:** Americas

**Year:** 2016

**Court:** The Supreme Court of the United States

**Health Topics:** Health care and health services, Hospitals, Sexual and reproductive health

**Human Rights:** Freedom from discrimination, Right to bodily integrity, Right to health

### Facts

In 2013, the Texas Legislature passed House Bill 2 (H.B. 2), which contained several provisions, which restricted access to abortion. One such requirement was that a doctor must have admitted privileges at a hospital within 30 miles and further every health facility offering abortion services must become mini hospitals as ambulatory surgical centers. A group of abortion providers (clinics and doctors) and patients challenged the said provisions in the law. The petitioners stated that the said provisions created barriers to safe abortion services and were in violation of equal protection and constituted arbitrary and unreasonable state action.

The District Court granted an injunction but the Fifth Circuit vacated the injunction permitting the challenged provisions to take effect. It subsequently upheld the provisions. A group of abortion providers filed a fresh lawsuit in the Federal District Court seeking injunctions against the enforcement of the said provisions. The District Court found that the surgical centre requirement and the admitting privilege imposed an undue burden on the right of women to seek a viable abortion. The Court of Appeal stayed the enforcement of the District Court judgment and reversed it on merits. It found both the provisions constitutional and also held that the claims were barred by the principle of *res-judicata*.

### Decision and Reasoning

The majority opinion held that the challenged provisions place a substantial obstacle in the path of women seeking an abortion, constitute an undue burden on abortion access, and therefore violate the Constitution. The majority rejected the Fifth Circuit's *res judicata* holding, noting that material facts had developed since the first round of litigation such as closure of clinics due to operation of the said provisions. Further, human values were at stake. The Court also criticized the Fifth Circuit's analysis of undue burden stating that there is a need for the courts to evaluate arguments carefully. It stated that the two provisions did not provide any benefit to women's health. The Court also relied on evidence that proved that these provisions projected severe barriers to access to abortion healthcare services as 75% of the clinics had closed down because of the provisions. With only a few existing clinics, the quality of the services would decline severely.

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The first dissenting opinion stated that women did not have a constitutional right to obtain abortion and there was a misplaced reliance on the principle of undue burden. The second dissenting opinion stated that the claims should have been barred by the principle of *res-judicata* as the plaintiffs had not proven that the link between the closure of clinics and the operation of the two provisions.

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### Decision Excerpts

“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. The parties stipulated that the requirement would further reduce the number of abortion facilities available to seven or eight facilities, located in Houston, Austin, San Antonio, and Dallas/Fort Worth. See App. 182-183. In the District Court's view, the proposition that these seven or eight providers could meet the demand of the entire State stretches credulity.” 46 F. Supp. 3d, at 682. We take this statement as a finding that these few

facilities could not “meet” that “demand.” (Page 32)

“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 (where additional land must be purchased). *Id.*, at 682. This evidence supports the conclusion that more surgical centers will not soon fill the gap when licensed facilities are forced to close.

We agree with the District Court that the surgical center requirement, like the admitting-privileges requirement, provides few, if any, health benefits for women, poses a substantial obstacle to women seeking abortions, and constitutes an “undue burden” on their constitutional right to do so.” (Page 36)

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