Kansans for Life

U.S. Supreme Court: new abortion ruling

FAST FACTS

The U.S. Supreme Court ruled June 27 to strike down two Texas abortion clinic regulations. The Court's last abortion ruling was *Gonzales* in 2007, when they upheld a ban on partial-birth abortions.

Name of lawsuit:
It's called "Hellerstedt" as a shorthand for the legal caption: Whole Woman's Health (chain of abortion businesses) v Hellerstedt (the current Texas Health department head).

Legal principle invoked:
"Undue burden" is a test concocted in the 1992 *Casey* abortion ruling to assess whether state abortion regulations present a substantial obstacle to the "constitutional" right to abortion.

Abortion provisions struck:
Texas enacted a comprehensive abortion law, HB 2, in 2013. The U.S. Supreme Court struck down two provisions for abortion businesses--previously upheld on appeal—requiring that:

(1) abortionists have admitting privileges at a hospital within 30 miles of clinic, and
(2) abortion facilities be licensed as ambulatory surgical centers (ASC) .

OVERVIEW

The U.S. Supreme Court 5-3 *Hellerstedt* ruling is a disappointment, but not unexpected. While it is being touted as a huge victory by abortion supporters, it is not. However, there is no question that *Hellerstedt* is a **truly troublesome ruling**, as it:

- undermines the Court's former support for the compelling interests of state legislatures,
- makes the Supreme Court the nation's medical board, and
- encourages activist courts to indulge in subjective judgment of abortion regulations.

Ultimately, it's a temporary setback for the pro-life movement. As a reminder, in 2000, the Court struck down a ban on partial-birth abortions and in 2007 upheld the ban. How? The language of the ban was tweaked, the public became educated (and outraged) and the Supreme Court composition changed.

Hellerstedt has abandoned any pretext that this Court is only involved to guarantee "safe and legal" abortion. They have **overruled protection for women in order to protect abortion business profits**. The Court has reinforced the schizophrenia that demands abortion be treated as a medical procedure, but not be subject to the ordinary state oversight other medical facilities must obey.

This ruling is harshly criticized by the dissenting justices (Thomas, Alito and Roberts) for **having serious procedural errors** and being *"so riddled with special exceptions for special rights"* that it violates "*the promise of a judiciary bound by the rule of law*." In other words, this is a prime example of the **abortion distortion**: the Supreme Court's tendency, in the words of deceased Justice Scalia, *"to bend the rules"* when

it comes to *"any effort to limit abortion."* Justice Alito read his dissent aloud, which indicates his strong opposition to the ruling, and included this takeaway: The Court had "**no authority** to strike down perfectly legal provisions."

Planned Parenthood has announced they will fight abortion regulations in eight states: Arizona, Florida, Michigan, Missouri, Pennsylvania, Tennessee, Texas and Virginia-- "with more to come" against similar laws across the country. National Right to Life Committee president, Carol Tobias **expects only measures identical to those blocked by the Supreme Court will be vulnerable to appeal.**

HOW IS KANSAS AFFECTED?

The Kansas Attorney General has prevailed in all concluded litigation filed by abortion interests since 2011. Three lawsuits are ongoing and the Kansas Attorney General's legal team is studying the effects of the *Hellerstedt* ruling on them.

Most directly related is the comprehensive abortion clinic licensure & inspection law Kansas enacted in 2011. That law includes facility safety standards, incident reporting, abortion-specific protocols and a requirement that abortions be performed by Kansas-licensed physicians. Relative to *Hellerstedt*, it

- does mandate hospital privileges for abortionists within 30 miles of the abortion site,
- does *not* require an abortion facility to be licensed as an ambulatory surgical center (ASC).

Although the admitting privilege provision does mirror that of Texas, the **context in Kansas is not the same**. All four Kansas abortion businesses claim to have at least one, or all, abortionists with hospital privileges. And although some of the Kansas facility requirements do resemble those of ASCs, those provisions would not automatically be struck down.

KANSAS ABORTION CLINICS & LITIGATION

Kansas has **4 abortion facilities**. The Overland Park Planned Parenthood clinic and Wichita's SouthWind Women's Center are licensed as ACSs. Planned Parenthood in Wichita is a small office offering weekly "medication" abortions (by pill). The Center for Women's Health is an Overland Park medical office which sued the 2011 Kansas licensure and inspection law, as well as sued the 2013 Pro-life Protections Act and the 2015 Unborn Child Protection from Dismemberment Abortion Act.

- **The 2015 law was enjoined** in the state district court of Judge Larry Hendricks. The appeal of that ruling has been accepted for review by the Kansas State Supreme Court, after a split ruling from the Kansas State Court of Appeals left the law under injunction. The crucial legal issue is the lower court's assertion that a broad "right" to abortion emanates from the 1859 Kansas constitution.
- **The 2013 law is in effect** severing tax funding for abortionists and training programs, promoting public policy of protection of "life at conception," and placing abortion informed consent provisions into statute. Litigation is on hold until the ruling on a state "right" to abortion.
- **The 2011 law is enjoined**—with action stalled unjustifiably for four years in the state district court of Judge Franklin Theis—and now delayed pending a ruling on the state "right" to abortion.