Emotions ran high at the Supreme Court today in oral argument of what is considered to be the most important abortion cases in over 20 years. Chief Justice Roberts repeatedly tried to cut off Justice Sotomayor as she asked questions when time was up of one of the attorneys arguing. When she and Justice Ginsburg did it again he didn't even try to stop them.

Perhaps more than any other issue all the Justices except Justice Kennedy are considered to have entrenched views on abortion. The questions for Justice Kennedy following oral argument appear to be whether he feels he has enough information to decide this case, and if he does, where he stands.

The issue in *Whole Women’s Health v. Hellerstedt* is whether Texas’s admitting privileges and ambulatory surgical center (ACS) requirements create an undue burden on women seeking abortions and are reasonably related to advancing women’s health.

Texas claims that women’s health is advanced if doctors performing abortions have admitting privileges at a nearby hospital and if abortion clinics must comply with ASC standards. Whole Women’s Health argues these requirements are a sham intended to make it more difficult for women to obtain abortions and that they create an undue burden on those seeking abortions because fewer than 10 of Texas’s over 40 abortion clinics remain open as a result.

The conservative Justices, including Justice Kennedy, expressed a preference to send the case back to the lower court for additional fact finding. The attorney for Whole Women’s Health was asked to provide specific citations to page numbers in the record that included direct evidence that these laws were the reason each clinic closed. Justice Kennedy also asked whether the case should be sent back to the lower court to determine whether the remaining clinics have capacity to meet the demand for abortions given clinic closures.

The more liberal Justices peppered Texas’s attorney with questions suggesting that the Texas laws create an undue burden and are a ruse to prevent women from getting abortions. For example, Justice Kagan pointed out that now about 900,000 Texas women of childbearing age live more than 100 miles from an abortion clinic. But it was Justice Breyer who began the most powerful line of questions about whether proof exists that anyone has actually benefitted from the admitting privileges requirement and about why Texas doesn’t require colonoscopies and liposuction to occur in ASCs, as those procedures are many times more likely to result in complications than abortions.

Justice Kennedy did not let Texas’s attorney off the hook. He pointed out that by requiring women to take pills for medical abortions in a doctor’s office rather than allowing them to take them at home, the effect of Texas’s law is to increase surgical abortions which may be the state’s prerogative but also may be “medically unwise.”

Numerous states have passed admitting privileges and ACS requirements. On February 24 the Fifth Circuit ruled that Louisiana’s admitting privileges law could go into effect.