In *Whole Women’s Health v. Hellerstedt*, the Supreme Court held 5-3 that Texas’s admitting privileges and ambulatory surgical center (ASC) requirements create an unconstitutional undue burden on women seeking abortions.

The admitting privileges law requires abortion doctors to have admitting privileges at a nearby hospital. It can be difficult for abortion doctors to obtain admitting privileges because “hospitals often condition admitting privileges on reaching a certain number of admissions per year” and abortions rarely lead to hospitalization.

The ambulatory surgical center (ASC) law requires “among other things, detailed specifications relating to the size of the nursing staff, building dimensions, and other building requirements.” The cost for an existing facility to come into compliance would be between about $1-$1.5 million.

Texas argued these two requirements would “protect the health of women who experience complications from abortions.”

Per *Planned Parenthood v. Casey* (1992), the Supreme Court ruled that while states have a legitimate interest in making sure abortions are performed safely, “[u]nnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on the right.”

Before analyzing the benefits and burdens of these laws Justice Breyer, writing for the majority, criticized the Fifth Circuit, which ruled in favor of Texas, for implying that the “existence or nonexistence of medical benefits” need not be considered in the undue burden analysis, for applying “less strict review” than required, and for saying that it is the role of state legislatures and not the courts to resolve medical uncertainty. According to the Court nothing in the record indicated that the admitting privileges requirement advanced women’s health because very few women who receive abortions need to be hospitalized.

The admitting privileges requirement placed a “substantial burden” on a woman’s ability to get an abortion because about half of Texas’s clinics closed as a result. These closures meant the “number of women of reproductive age living in a county . . . more than 150 miles from a provider increased from approximately 86,000 to 400,000 . . . and the number of women living in a county more than 200 miles from a provider from approximately 10,000 to 290,000.”

Regarding the ASC requirement the Court concluded that it does not benefit patients. For those who have abortions via medication complications almost always arise only after the patient has left the facility. Also, Texas does not require that much riskier procedures like child birth and colonoscopies be performed in an ASC. The ASC requirement places a substantial obstacle in the path of women seeking an abortion the Court concluded because it will further reduce the number of abortion clinics (initially about 40) to seven or eight. “Common sense” suggests the remaining clinics will not be able to keep up with demand.