In a 5-4 decision in *June Medical Services v. Russo* the Supreme Court struck down Louisiana’s admitting privileges law. Five Justices agreed that Louisiana’s law created an unconstitutional “substantial obstacle” to women obtaining abortions.

A Louisiana law requiring abortion providers to hold admitting privileges at a nearby hospital was nearly identical to a Texas law the Supreme Court struck down 5-4 in *Whole Woman’s Health v. Hellerstedt* (2016). Admitting privileges allow doctors to admit patients to a hospital and perform surgery.

The plurality opinion, written by Justice Breyer, agreed with the district court in this case that Louisiana’s law created “substantial obstacles” for women seeking abortions. Justice Breyer reasoned that it was likely only one doctor in one location would continue to perform abortions in the state where previously six total doctors working in three different locations performed abortions.

The district court found that four of the six doctors were unlikely to obtain admitting privileges because “hospital admissions for abortion are vanishingly rare mean[ing] that, unless they also maintain active OB/GYN practices, abortion providers in Louisiana are unlikely to have any recent in-hospital experience. Yet such experience can well be a precondition to obtaining privileges.” The fifth doctor testified he would stop performing abortions if he was the last doctor allowed to do so in northern Louisiana, which he would be. The one remaining fulltime abortion doctor could meet no more than about 30% of the demand for abortions in Louisiana.

In *Planned Parenthood of Southeastern Pennsylvania. v. Casey* (1992) the Supreme Court stated that “[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” and are unconstitutional. In *Whole Woman’s Health* the Court held that “this standard requires courts independently to review the legislative findings upon which an abortion-related statute rests and to weigh the law’s ‘asserted benefits against the burdens’ it imposes on abortion access.”

The Court’s plurality again agreed with the district court that Louisiana law does not protect women’s health. The district court found that the admitting-privileges requirement serves no “relevant credentialing function” and “does not conform to prevailing medical standards and will not improve the safety of abortion in Louisiana.”


Chief Justice Roberts wrote a concurring opinion which provided the fifth vote for the holding that Louisiana’s law is unconstitutional. According to the Chief Justice, “[b]ecause Louisiana’s admitting privileges requirement would restrict women’s access to abortion to the same degree as Texas’s law, it also cannot stand under our precedent.”

The Chief Justice had dissented in *Whole Woman’s Health* but concluded it was good law because of
the principle of *stare decisis* ("to stand by things decided"). Roberts rejected the balancing test the Court adopted in *Whole Woman’s Health* writing “[n]othing about Casey suggested that a weighing of costs and benefits of an abortion regulation was a job for the courts.” But, regardless of the balancing test, the Chief Justice agreed with the plurality “that the determination in *Whole Woman’s Health* that Texas’s law imposed a substantial obstacle requires the same determination about Louisiana’s law.”

Justices Thomas, Alito, Gorsuch, and Kavanaugh dissented. According to Justice Alito, who was joined fully or partially by the other dissenting Justices in his dissent, “the abortion right recognized in this Court’s decisions is used like a bulldozer to flatten legal rules that stand in the way.”

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