

[Whole Woman's Health v. Hellerstedt \(2016\)](#) ^[1]

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In the 2016 case *Whole Woman's Health v. Hellerstedt* the US Supreme Court ruled unconstitutional the Texas requirements that [abortion](#)^[2] providers have admitting privileges at local hospitals and that [abortion](#)^[2] facilities meet ambulatory surgical center standards. Whole Woman's Health represented [abortion](#)^[2] care providers in Texas and brought the case against the commissioner for the Texas Department of State Health Services, John Hellerstedt. In a five to three decision, the US Supreme Court ruled that the requirements of the challenged law, Texas House Bill 2, had forced the majority of [abortion](#)^[2] care facilities to close. With fewer available facilities, women faced undue burdens of travel time and cost when seeking abortions, restricting their access [abortion](#)^[2] care. In previous US Supreme Court cases *Roe v. Wade*^[3] (1973) and *Planned Parenthood v. Casey* (1992), the Court ruled that placing undue burdens on women seeking [abortion](#)^[2] care was unconstitutional. Upholding those decisions in *Whole Woman's Health v. Hellerstedt*, the US Supreme Court struck down Texas House Bill 2 and protected women's access to [abortion](#)^[2] care.

In July 2013, Rick Perry, the governor of Texas, signed Texas House Bill 2 into law to regulate [abortion](#)^[2] care in the state. The law established two requirements for [abortion](#)^[2] care providers that were later challenged in *Whole Woman's Health v. Hellerstedt*. House Bill 2 first required that any physician performing an [abortion](#)^[2] must have admitting privileges at a hospital within thirty miles of the clinic's location, and that that hospital must provide obstetrical or gynecological services. Having admitting privileges at a hospital means that a physician has the rights to admit patients and to provide care there. Physicians must apply to hospitals for admitting privileges, and hospitals decide to whom they grant admitting privileges. In some cases, hospitals that do not perform abortions do not grant admitting privileges to physicians that perform them. Additionally, some hospitals revoke the admitting privileges of physicians that do not admit a certain amount of patients to the hospital per year. Therefore, Texas's requirement that physicians have such admitting privileges was difficult for many physicians to fulfill, leading many of them to cease providing abortions.

House Bill 2 also required that [abortion](#)^[2] clinics have ambulatory surgical center capabilities. Ambulatory surgical centers are facilities where physicians perform procedures that have been historically performed in hospitals. Many of those procedures are invasive procedures in which physicians make incisions into the body or expose a sterile tissue to the environment outside the body. Texas state law requires ambulatory surgical centers to have full operating theatres, as well as specific corridor widths and room sizes. Renovating an [abortion](#)^[2] clinic to meet the ambulatory surgical center requirements is expensive, potentially costing millions of dollars, and some clinics cannot complete them due to lack of space. Accordingly, the second requirement of House Bill 2 later forced many [abortion](#)^[2] clinics to close.

The bill's two primary requirements, having admitting privileges and meeting ambulatory surgical center standards, went into effect at different times. The admitting privileges requirement was supposed to go into effect 29 October 2013, the standards requirement in September of 2014. Both requirements were challenged before they went into effect.

In September 2013, before the first requirement went into effect, Planned Parenthood of Greater Texas Health Services, headquartered in Dallas, Texas, and other [abortion](#)^[2] care providers filed a case against Texas's attorney general, Gregory Abbott. Lee Yeakel, a judge in the US District Court for the Western District of Texas in Austin, Texas, heard the case *Planned Parenthood of Greater Texas Surgical Health Services v. Abbott*. In the case, Planned Parenthood challenged the constitutionality of the admitting privileges requirement of House Bill 2. They argued that obtaining those privileges is difficult and that physicians without them would be unable to perform abortions, which meant the [abortion](#)^[2] care facilities would have to close. Furthermore, they argued that with less facilities performing abortions, the requirement would create undue burden on women seeking abortions in Texas. Planned Parenthood referenced the case *Planned Parenthood v. Casey* (1992), in which the US Supreme Court had decided that laws that placed undue burdens on women seeking abortions were unconstitutional.

In *Planned Parenthood v. Abbott*, the judge, Yeakel, granted the [abortion](#)^[2] care providers an injunction that prevented Texas from enforcing the admitting privileges requirement of House Bill 2. However, Abbott, on behalf of the state of Texas, appealed the case to the US Court of Appeals for the Fifth Circuit in New Orleans, Louisiana. Three days later, the appeals court judges Priscilla Owen, Jennifer Elrod, and Catharina Haynes reversed Yeakel's decision, enabling Texas to enforce the requirement.

On 6 April 2014, the admitting privileges requirement went into effect, leading to the closure of many [abortion](#)^[2] care facilities in Texas. Before House Bill 2 went into effect, more than forty [abortion](#)^[2] care facilities provided service to women in Texas. The admitting privilege requirement forced nearly half of those facilities to close because the physicians at those clinics did not have hospital admitting privileges. Following those closures, many cities in Texas no longer had a facility that offered [abortion](#)^[2] care. Though the ambulatory surgical center requirement did not go into effect before House Bill 2 was challenged again, leaving its actual effects unknown, many predicted that if it did, only eight facilities in Texas would be able to meet the requirements. Those

facilities were in large cities, such as Dallas and Houston, leaving much of Texas without a local [abortion](#)^[2] care facility.

Following the appeals court's decision, in April of 2014, an [organization](#)^[4] that ran seven [abortion](#)^[2] facilities in Texas, Whole Woman's Health, filed a case against Texas's commissioner for the Department of State Health Services, David Lakey. Whole Woman's Health challenged the constitutionality of the Texas law. Yeakel, the judge of the US District Court for the Western District of Texas in Austin, presided over the case *Whole Woman's Health v. Lakey*. In the case, Whole Woman's Health argued that the requirements of House Bill 2 violated the decision made in the US Supreme Court case *Planned Parenthood v. Casey*. They claimed that the requirements placed an undue burden on women seeking abortions and therefore prevented women from exercising their constitutional right to access abortions, as established in the US Supreme Court case *Roe v. Wade*^[3] (1973).

Whole Woman's Health asked the US district court to stop the enforcement of both requirements in House Bill 2. The [abortion](#)^[2] providers first asked the court to waive the admitting privileges requirement for the physicians in [abortion](#)^[2] facilities in El Paso, Texas, and McAllen, Texas, which were run by the [organization](#)^[4]. Whole Woman's Health stated that in ten years of operating in McAllen, the physicians there had performed over 17,000 abortions, and zero women had to be admitted to the hospital due to complications. Because abortions were such a safe procedure, they continued, it was impossible to admit the number of patients required by hospitals to maintain active admitting privileges. Whole Woman's Health also asked the court to prevent the enforcement of the ambulatory surgical center requirement for the entire state. They claimed the strict facility requirements were unnecessary because [abortion](#)^[2] procedures rarely required the equipment of full operating theatres.

To support their request that the US district court suspend both requirements, Whole Woman's Health argued how House Bill 2 would affect [abortion](#)^[2] facilities in Texas. Whole Woman's Health stated that the admitting privileges requirement of House Bill 2 had already forced almost half of the [abortion](#)^[2] care facilities in Texas to close. They also argued that because nearly twenty of the forty [abortion](#)^[2] care facilities in Texas had closed, women had to travel much farther than they previously would have had to travel to obtain abortions. That meant the women would have to spend more time and money to receive [abortion](#)^[2] care, which Whole Woman's Health viewed as undue burdens. Additionally, they claimed that if the House Bill 2's ambulatory surgical center requirement went into effect, only seven or eight facilities would remain open in Texas. Those facilities, according to expert testimony in the case, would have to perform 60,000 to 70,000 abortions per year, when they ordinarily performed about 14,000. Therefore, according to Whole Woman's Health, the court should do away with both requirements of House Bill 2.

In response to Whole Woman's Health's arguments, Lakey and the state of Texas argued that the requirements of House Bill 2 were meant to protect women's health. They pointed out that admitting privileges at hospitals gave physicians the option to move patients to a hospital should a deadly complication arise during an [abortion](#)^[2] procedure. Similarly, they claimed that upgrading facilities to ambulatory surgical center standards ensured that the women receiving abortions were in the safest facility possible. They also argued that the recent facility closures may not have been due to House Bill 2 and that the requirements would force the closure of only unsafe facilities.

After a four-day trial, Yeakel decided in favor of the [organization](#)^[4] Whole Woman's Health, not the state of Texas. As is standard in court cases, Yeakel wrote an opinion to explain the reasoning behind his decision. In the document, he stated that House Bill 2's requirements unduly burdened women seeking abortions and provided no benefit to them. He mentioned that abortions were safer than other medical procedures, like colonoscopies, that did not have to be performed in ambulatory surgical centers. Yeakel prohibited the enforcement of the ambulatory surgical center requirement and waived the admitting privileges requirement for the physicians in El Paso and McAllen, as requested by Whole Woman's Health.

Lakey appealed Yeakel's decision to the US Court of Appeals for the Fifth Circuit. On 2 October 2014, the circuit judges, Jerry Smith, Jennifer Elrod, and Stephen Higginson, prevented Yeakel's decision from taking effect on the grounds that the case *Planned Parenthood v. Abbott* had already ruled on the same issue. That meant that House Bill 2 was enforceable once more. In their decision on 9 June 2015, the appeals court judges stated that neither of the requirements presented an undue burden or a barrier for women seeking abortions. Because the state had a compelling interest in women's health and those two requirements protected it, they concluded, the requirements of House Bill 2 were constitutional.

However, Whole Woman's Health requested that the US Supreme Court prevent the appeals court decision from taking effect. On 29 June 2015, The US Supreme Court granted that request, prohibiting the enforcement of House Bill 2. Following that decision, Whole Woman's Health prepared a petition for the US Supreme Court to take the case. They submitted it on 2 September 2015, and the Supreme Court accepted the case. On 1 January 2016, John Hellerstedt accepted the position of commissioner of the Department of State Health Services, replacing Lakey. The name of the case changed to *Whole Woman's Health v. Hellerstedt*.

On 2 March 2016, the US Supreme Court heard oral arguments for the case. Whole Woman's Health maintained their arguments, that the restrictions placed undue burdens on women and forced many [abortion](#)^[2] care facilities to close. Hellerstedt continued the argument Lakey had made, that the requirements protected women's health. The Supreme Court decided the case on 27 June 2016. Though the Court normally had nine justices, due to the recent death of Justice Antonin Scalia, only eight justices decided the case. Five justices decided in favor of Whole Woman's Health, meaning they won the case. Those justices were Ruth Bader Ginsberg, Sonia Sotomayor, [Anthony Kennedy](#)^[5], Elena Kagan, and Stephen Breyer. Three justices disagreed with that decision. They were Clarence Thomas, John Roberts, and Samuel Alito.

Breyer wrote the majority opinion for the case. In it, he stated that the previous case of *Planned Parenthood v. Abbott* did not prevent *Whole Woman's Health v. Hellerstedt* from being heard because *Abbott* was decided before the admitting privileges took effect and so addressed a different issue. With that, Breyer dismissed the argument made by the US Court of Appeals for the Fifth Circuit. Breyer then explained the US Supreme Court's decision, which agreed with many of the arguments made by *Whole Woman's Health*. He stated that the requirements of House Bill 2 placed an undue burden on women seeking abortions and so were unconstitutional.

Breyer stated that the additional requirements from House Bill 2 would force many facilities to close, as they would not be able to afford the remodeling costs of 1.5 to 3 million dollars. The requirements, Breyer noted, would leave only seven or eight functioning [abortion](#)^[2] care facilities in Texas, an amount that would be too low to be able to perform the number of abortions requested in that state every year. Therefore, the US Supreme Court agreed with Yeakel's original decision and ruled the two requirements of House Bill 2 unconstitutional.

Several justices wrote their own opinions on the case, explaining how they agreed or disagreed with the Court's decision and what reasoning they used. Justice Ginsburg's opinion agreed with the Court's decision and reiterated once more how House Bill 2 did not protect women's health but simply restricted access to [abortion](#)^[2] care. She noted that women without access to [abortion](#)^[2] care would seek out dangerous alternatives to terminate their pregnancies. Therefore, she concluded, House Bill 2 should not be enforced.

Justice Thomas wrote an opinion that disagreed with the Court's decision. In his opinion, Thomas critiqued the Court's decision in *Whole Woman's Health v. Hellerstedt* and the Court's recent decision making overall. Thomas claimed that the US Supreme Court ruled too often against laws regulating abortions, even if those laws were valid. According to Thomas, the Court defended the right to [abortion](#)^[2] too vigorously compared to other rights. He pointed out that in *Whole Woman's Health v. Hellerstedt* the Court allowed physicians to defend the rights of women seeking abortions, which he claimed was lenient and not strictly legal. Thomas continued on to say that the Court had not fully considered the benefits of House Bill 2 and focused instead on the burdens it placed on women. That, he said, was inappropriate, as the Court was supposed to weigh the benefits and burdens against each other. He claimed that the benefits of House Bill 2 were uncertain, which meant that the Supreme Court did not have the right to overrule the Texas legislature on the matter. Using *Whole Woman's Health v. Hellerstedt* as an example, Thomas concluded that the Supreme Court was more lenient in cases that involved [abortion](#)^[2] rights than it was in cases involving other rights.

Justice Alito also wrote an opinion that disagreed with the Court's decision, which was joined by Justices Roberts and Thomas. In his opinion, Alito argued that another court had already addressed the constitutionality of House Bill 2 in the case *Planned Parenthood v. Abbott*. Therefore, Alito claimed, the US Supreme Court had no right to rule on the same issue in *Whole Woman's Health v. Hellerstedt*. Like Thomas, Alito proposed that the Court disregarded normal legal rules so that it could hear the case and rule in favor of protecting [abortion](#)^[2] rights. He also pointed out that even if some requirements of House Bill 2 were unconstitutional, the Court acted inappropriately when it ruled the rest of the law unconstitutional. For example, he said, part of House Bill 2 mandated that [abortion](#)^[2] care facilities followed basic fire safety measures, which was now unenforceable according to the US Supreme Court. Alito concluded by saying the Supreme Court was undermining the public's confidence in the Court's neutrality by disregarding legal rules and defending the right to abortions too strongly.

Though several justices did disagree with the decision, the majority of the Court decided in favor of *Whole Woman's Health* and against the enforcement of House Bill 2. Because the US Supreme Court struck down House Bill 2, many of the [abortion](#)^[2] care facilities in Texas remained open. Women in Texas retained wider access to [abortion](#)^[2] care. Law professor at the University of Wisconsin in Madison, Wisconsin, Alta Charo, has noted that *Whole Woman's Health v. Hellerstedt* was one of the first court cases to challenge laws restricting abortions through strict regulations of facilities and physicians. By striking down House Bill 2, the US Supreme Court established legal precedent that state and federal [abortion](#)^[2] regulations, even those claimed to be enacted in the interest of the health of women and fetuses, must have real benefits that outweigh the burdens that they create. Judges deciding similar cases later on can reference the Supreme Court's decision in *Whole Woman's Health v. Hellerstedt* to support their own decisions.

Sources

1. Charo, R. Alta. "Whole Women's Victory—or Not?" *New England Journal of Medicine* 375 (2016): 809–11. <http://www.nejm.org/doi/full/10.1056/NEJMp1609167>^[6] (Accessed November 2, 2017).
2. Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott, 951 F. Supp. 2d 891 (West Dist. Tex. 2013). https://scholar.google.com/scholar_case?case=2099386983225132349^[7] (Accessed September 4, 2016).
3. Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott, 734 F. 3d 406 (2013). https://scholar.google.com/scholar_case?case=11402263624687015759^[8] (Accessed September 4, 2016).
4. Planned Parenthood v. Casey, 505 U.S. 833 (1992). https://scholar.google.com/scholar_case?case=6298856056242550994^[9] (Accessed September 4, 2016).
5. *Roe v. Wade*^[3], 410 U.S. 113 (1973). https://scholar.google.com/scholar_case?case=12334123945835207673^[10]

(Accessed September 4, 2016).

6. Texas House Bill 2, 83rd Legislature Second Special Session, 2013, <http://www.legis.state.tx.us/tlodocs/832/billtext/pdf/HB00002F.pdf> ^[11] (Accessed September 4, 2016).
7. Whole Woman's Health v. Cole, 790 F. 3d 563 (2015). https://scholar.google.com/scholar_case?case=14192682821420050675 ^[12] (Accessed September 4, 2016).
8. Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292 (2016). https://scholar.google.com/scholar_case?case=12719084930434459940 ^[13] (Accessed September 4, 2016).
9. Whole Woman's Health v. Lakey, 46 F. Supp. 3d 673 (2014). https://scholar.google.com/scholar_case?case=16984873954220059412 ^[14] (Accessed September 4, 2016).
10. Whole Woman's Health v. Lakey, 769 F. 3d 285 (2014). https://scholar.google.com/scholar_case?case=3575825538574664485 ^[15] (Accessed September 4, 2016).

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