

# SCOTUS Heard Oral Arguments on the Most Significant Abortion Case in Nearly a Decade

## *Whole Woman's Health v. Hellerstadt*

### The Broader Issue

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- In challenging Texas's abortion laws, a Supreme Court ruling would clarify whether Texas's regulations amount to an "undue burden" or "substantial obstacle" on a woman's right to have an abortion.
- The state contends that its abortion regulations were put in place to protect women's health; conversely, abortion rights advocates argue that the law is intended to limit access to abortions by causing most clinics in the state to close.

### The Narrow Issue

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- At issue are two provisions in Texas's HB2 law: 1) the 'admitting privileges requirement,' which requires doctors who perform abortion to have the right to admit patients to a local hospital; and, 2) the 'Ambulatory Surgical Center (ASC) requirement,' which requires a abortion clinics to have facilities comparable to outpatient surgical centers.
- The court is considering whether the abortion clinics that shuttered in the wake of the HB2 regulations actually did so because of the regulation.

### History

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- In 2014, the federal district court blocked the enforcement of Texas's HB2, finding that both requirements imposed an unconstitutional burden on a woman's access to abortion.
- The U.S. Court of Appeals for the Fifth Circuit reversed the district court's decision, allowing HB2 to be enforced.

### How May the Court Rule?

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- With Scalia's passing, there is an even number of justices on the Supreme Court, with the four liberal justice almost certain to vote against upholding the HB2 laws, the three conservative justices almost certain to vote to uphold the HB2 laws, and Justice Anthony Kennedy in the middle.
- A 4-4 tie would uphold the Fifth Circuit's decision, however it is possible the Supreme Court will remand the case, thus sending it back to the Fifth Circuit for reconsideration.

Sources: Garrett Epps, "Will the Supreme Court Deadlock on the Texas Abortion Case?" *The Atlantic*, March 2, 2016; Amy L Howe, "Kennedy holds the key in Texas abortion case," *Howe on the Court*, March 3, 2016; *Center for Reproductive Rights*, 2016.

# Justice Kennedy is the Swing Vote in Crucial SCOTUS Abortion Case

How the Justices are Likely to Vote in *Whole Woman's Health v. Hellerstadt*

## Justices Likely to Reverse Texas's Abortion Law



Ginsberg



Kagan



Sotomayor



Breyer

- These Justices argue that Texas's abortion law place an undue burden on a woman's right to choose an abortion
- They question that assertion that these regulations promote women's health and argue this health rationale is a pretext for shutting down abortion clinics

## Justices Likely to Uphold Texas's Abortion Law



Roberts



Alito



Thomas

- Chief Justice Roberts noted that that the law has *something* to do with health, and asked why is that not enough?
- Justice Alito claimed that challengers had not proven that the regulations actually caused any clinics to close, implying that the shuttering of clinics on the day the law took effect were merely coincidental

## The Swing Vote



Kennedy

- Kennedy posed questions as to whether the clinics that have remained open can provide for Texas's demand for abortions and whether the ensuing rise in surgical abortions as opposed to medical procedures was medically wise
- It is unclear how Kennedy will vote on the case, however his comments during the argument suggest that Kennedy may either strike down the law or send the case back to the lower court

Sources: Garrett Epps, "Will the Supreme Court Deadlock on the Texas Abortion Case?" *The Atlantic*, March 2, 2016; Amy L Howe, "Kennedy holds the key in Texas abortion case," *Howe on the Court*, March 3, 2016.