

## Attys React To Supreme Court's Abortion Ruling

*Law360, New York (June 27, 2016, 8:10 PM EDT)* -- The U.S. Supreme Court on Monday struck down a Texas law regulating abortion doctors and clinics, ruling 5-3 that it places an unconstitutional “undue burden” on access to abortion. Here, attorneys tell Law360 why the decision is significant.

### Leah Bruno, Dentons



"The Supreme Court's decision is not only in the best interests of the women across the country, but in the best interests of businesses whose employees need access to the full range of reproductive health services. As pointed out in the amicus brief we submitted to the Supreme Court on behalf of [dozens of] business leaders, obstacles to necessary reproductive healthcare hurt businesses and the economy as a whole by impeding women's ability to participate fully in the workforce. Today's decisive majority opinion ensures that women will maintain the right to make decisions about their reproductive health, without putting their future employment at greater risk, regardless of where they live."

### Sherry Colb, Cornell Law



"This decision is significant in moving from identifying a right-in-theory to recognizing one in practice. Forcing doctors to jump through hoops that in no way enhance women's health will no longer have a place on the 'ready options' list of anti-abortion legislative activists. This is a victory for truth in advertising. If opponents of abortion truly want to persuade women not to terminate their pregnancies, they will have to use the tools of persuasion — argument and discussion — rather than unilaterally imposing pretextual 'protections' for women's health. Simply asserting that a measure is there to 'help women' will not, after today's ruling, make it so."

### Erin Culbertson, Milbank Tweed Hadley & McCloy LLP



“We are pleased that the Supreme Court overturned Texas’ burdensome and pretextual regulations. The Texas laws being challenged not only undermined patients’ liberty and autonomy, but they threatened to reduce the already limited supply of safe and affordable abortion services. Today’s majority opinion will allow patients in Texas, and across the country, to be better served by a free market limited by regulations that are based on sound scientific research, rather than those intended only to create impediments and make it more difficult for women to get abortions.”

**Walter Dellinger, O’Melveny & Myers LLP**



“Monday’s decision striking down two Texas abortion restrictions is of critical importance to women’s health all over the country. Of secondary importance, but worthy of note, is that the integrity of the Supreme Court as an institution was also at stake. The Texas law was a sham, pure and simple. Texas did not argue that its law was intended to advance an interest in evolving potential life. The only justification offered was the advancement of women’s health. Had the court sustained this law on that basis, in the face of evidence that the stated justifications were utterly pretextual, the credibility of the court would have suffered badly.”

**Jocelyn Floyd, Thomas More Society**



“The Supreme Court today overturned a Texas law protecting women’s health because it viewed the law as ‘unnecessary.’ Texas enacted common-sense provisions to protect women at abortion facilities from substandard care, requiring abortion providers to meet the same standards as other similar medical clinics. Here in Illinois, we’ve seen all too well what disastrous consequences come from holding abortion providers to lower standards than other medical providers — contamination, dirty facilities, patient injury, and even death. We’re disappointed that the Supreme Court views vital protection against these consequences as ‘unnecessary.’”

**Linda Goldstein, Dechert LLP**



“Justice [Stephen] Breyer’s decision focuses on the ample medical and statistical evidence showing the safety of abortion procedures generally and in Texas, some of which was presented by the amicus briefs submitted to the court. The decision will make it much harder for states to use ‘women’s

health' as a pretext for imposing unnecessary regulatory requirements on physicians and clinics that perform abortion services."

**Clare Huntington, Fordham Law School**



"This is a clear-cut win for supporters of reproductive health. The Supreme Court held that states must be much more careful when regulating providers of reproductive health services and that states cannot simply claim to be protecting women's health. States must prove that they are doing so and that the benefits to women's health outweigh the burden on the constitutionally protected right of a woman to choose whether to proceed with a pregnancy. The Supreme Court's decision makes clear that courts will scrutinize claims by legislatures. The Supreme Court underscored the independent duty of courts to collect evidence and make factual determinations. The court's opinion is particularly attuned to the real world effects of the Texas regulations, describing at length the challenges posed by traveling long distances and the concerns about the health care available to women in 'crammed-to-capacity' clinics."

**J. Alexander Lawrence, Morrison & Foerster LLP**



"As co-counsel in *Whole Woman's Health v. Hellerstedt*, we could not be more pleased with the Supreme Court's decision. Women across the country have had their constitutional rights vindicated. The victory today renews the promise of *Roe v. Wade* for the next generation of women."

**Danielle McLaughlin, Nixon Peabody LLP**



"First, because the decision in *Whole Woman's Health* was 5-3, the likely dissenting vote of Justice [Antonin] Scalia would not have made a difference to today's outcome. Second, the decision is a strong reaffirmance of the ruling in *Planned Parenthood v. Casey*, that no law may place an undue burden on the constitutional right of a woman to seek an abortion. Justice Breyer's ruling was broad, meaning that similar Targeted Regulation of Abortion Provider, or TRAP laws, requiring surgical center standards and hospital admitting privileges in other states, including Missouri and Utah, are unconstitutional. The Supreme Court's protection of the right to seek an abortion is certainly stronger today than it was yesterday."

**Atara Miller, Milbank Tweed Hadley & McCloy LLP**



“The Supreme Court’s decision today in *Whole Woman’s Health v. Hellerstedt* was a welcome example of judicial engagement. Deference to the legislature in this case was unwarranted, as the Texas laws at issue were disconnected [to] women’s health and safety. Simply, over-regulation of abortion providers does more harm than good, limiting the supply of abortion services while driving costs higher. Patients, particularly poor patients, with few alternatives will either delay treatment or turn to riskier forms of treatment. The stakes of today’s decision were high, and we are pleased that the Supreme Court once again protected personal liberties from unjustifiable government interference.”

--Editing by Emily Kokoll.