



ISSUE ADVISORY: *Whole Woman's Health* Ruling Will Help Stop TRAP Laws

By Jan Erickson, NOW Government Relations Director and Erika Nassirinia, NOW Government Relations Intern
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Supreme Court in ruling in *Whole Woman's Health v. Hellerstedt* (WWH) signaled one of the most significant victories for reproductive rights in several decades. By deciding that any law or regulation that does not advance women's health – as is the case with the two TRAP laws in Texas – a majority on the Court greatly strengthened the standard by which women's health advocates can seek to have courts permanently enjoin similar restrictions in other states. Advocates are moving forward to have those laws blocked and are looking at ways that other types of restrictions might be challenged under the re-affirmed standard, showing that many of the hundreds of restrictive laws passed by states impede a woman's access to abortion care and do not improve her health.

TRAP Laws Resulted in Clinic Shutdowns – The Texas law in question was House Bill 2, passed in 2013, a package of restrictive provisions which included several Targeted Regulation of Abortion Providers (TRAP) laws, a ban on abortions at later than 20 weeks and a limitation on medication abortions. The TRAP provisions found unconstitutional required abortion providers to obtain physician admitting privileges at hospitals within 30 miles of where the abortion was performed, and to meet building standards of ambulatory surgical centers (essentially mini-hospitals), causing roughly half the state's more than 40 clinics to close and threatening most of the remaining ones with eventual closure.

Approximately 5.4 million women of reproductive age live in that huge state and the loss of clinics made it difficult for many women – particularly those who live in the rural and more remote parts of the state – to have access to services. Costs and wait times for abortion care increased and some women were reported having to travel to other states for the procedure, while others sought Mexican sources for medication abortion. One study found that the abortion rate declined by 13 percent following the passage of H.B. 2.

After the Supreme Court ruling was announced on June 27, Texas Gov. Greg Abbott (R) admitted that H.B. 2 was meant to limit abortions.

Such Laws Do Not Advance Women's Health - In essence, the Court affirmed that women have a constitutional right to end a pre-viability pregnancy and that states may not impede that right. The majority opinion, written by Justice Stephen Breyer, relied on precedent set in *Planned Parenthood of Southeastern Pennsylvania v. Casey* which prohibits states from enacting "unnecessary health restrictions" that create obstacles for women seeking abortion care. The majority opinion in *Whole Women's Health* closely argued that each of the regulations is not medically necessary, does not advance women's health care, and using the undue burden standard embraced by *Casey*, demonstrates that these laws only serve to prevent women from obtaining abortions.

The decision clarified two important aspects of the undue burden standard. First, that a burden on abortion access is *undue* if it does not incur a proportional benefit, and second, that the benefits and burdens of abortion restrictions must be judged by credible evidence. The assertion by Texas that the TRAP laws were needed to protect women's health and safety were found to be spurious. Abortion is one of the safest medical procedures and the TRAP laws only serve to impede women's access to abortion care.

Ambulatory Surgical Center Requirements – Six states have enacted that requirement: Michigan, Missouri, Pennsylvania, Tennessee, Texas and Virginia. In four states (Michigan, Missouri, Pennsylvania and Virginia) the law is currently in effect. In Tennessee, the law is blocked as a legal challenge proceeds and in Texas the law is permanently blocked.

Physicians' Admitting Privileges – Ten states have enacted that requirement: North Dakota, Missouri, Tennessee, Wisconsin, Kansas, Oklahoma, Mississippi, Alabama, Louisiana and Texas. In three states (Alabama, Wisconsin, Texas) they are permanently enjoined. In the states of Indiana, Kansas, Mississippi, Oklahoma and Louisiana the laws are currently blocked as legal challenges proceed. In three states (Missouri, North Dakota and Tennessee) the laws are in effect.

Hopefully, each of these TRAP laws can be quickly knocked down.

Numerous Types of Restrictions Must Go - Other types of restrictions adopted in various states – and which likely do not advance women's health – include method bans, defunding bills, and bills responding to Planned Parenthood sting videos. According to the Center for Reproductive Rights, important upcoming cases that hold further ramifications for reproductive rights include *Planned Parenthood of the Great Northwest and the Hawaiian Islands v. Wasden*, which involves Idaho's telemedicine ban, *Gainesville Woman Care v. State of Florida*, regarding Florida's 24 hour mandatory delay period, *Nova Health Systems v. Pruitt*, involving Oklahoma's 72 hour mandatory delay period, and *Hope Medical Group for Women v. Gee*, which concerns Louisiana's seven new abortion restriction laws.

Legislation Needed to Halt Hundreds of Restrictions- Legislation is needed at the federal level to stop a tsunami of restrictive bills being passed in the states. Over 360 measures restricting access to reproductive health care were introduced in state legislatures this year alone. More than 80 have been enacted so far; that total should be added to the 876 restrictive measures (a single bill often contains several provisions) that have been passed by state legislatures since 1995.

Although the victory in *Whole Woman's Health* was significant, the decision in itself is not enough to wholly protect reproductive rights. Congress must work to ensure that women's constitutional right to abortion is not restricted, an unlikely agenda given the current Republican-dominated House and Senate. Two critically important bills introduced this Congress, if adopted, would have dramatically positive implications for reproductive rights nation-wide.

The **Women's Health Protection Act** (H.R. 448/ S. 217), introduced by Sen. Richard Blumenthal (D-Conn.) and Rep. Judy Chu (D-Calif.), would invalidate laws that single out abortion for restrictions more burdensome than those imposed on similar medical care, and which do not improve health or safety and limit access to safe and legal abortion services. The bill would prohibit a number of dangerous and unnecessary anti-choice provisions, including TRAP laws, mandatory ultrasounds, pre-viability abortion bans, restrictions on access to medication abortion, and restrictions on abortion training for medical providers. The bill currently has 145 House Cosponsors and 34 Senate cosponsors. Each of the more than 900 state laws could be enjoined if this bill were to become law.

The **EACH Woman Act** (H.R. 2972), introduced by Rep. Barbara Lee (D-Calif.), is another important piece of legislation in its potential to expand access to care. The bill would eliminate federal coverage restrictions under the harmful Hyde Amendment which bans the use of federal funds under Medicaid and Medicare to pay for abortion care. This prohibition has made it impossible in many cases for low-income women to afford abortion care. (Seventeen states do provide funds for abortion care when medically necessary, but use state matching funds to do so.)

The bill sets up the federal government as the standard-bearer, ensuring everyone who receives care or insurance through the federal government will have coverage for abortion services. The act also restores abortion coverage to those enrolled in government health insurance plans, such as Medicaid and Medicare, those enrolled in government-managed health insurance programs via employment including FEHBP and TRICARE, and those who receive health care from a government provider or program, such as Indian Health Service and the Federal Bureau of Prisons.

Lastly, it prohibits political interference with decisions by private health insurance companies to offer coverage of abortion care, safeguarding the right to the reproductive services an individual feels to be necessary. The act currently has 119 House cosponsors. Twenty-nine states now prohibit insurance policies in some manner: 11 forbid abortion coverage in private plans, 23 prohibit coverage in the state insurance exchanges under the Affordable Care Act, and 17 prohibit abortion coverage for public employees.

Though there is little chance that the anti-reproductive rights, anti-women's equality Republican majority currently in control of Congress will consider such legislation, hope remains that the 115th Congress, when it convenes in January, will have democratic majorities who support women's reproductive rights.

More information:

Center for Reproductive Rights –Whole Woman's Health v. Hellerstedt,
<http://www.reproductiverights.org/case/whole-womans-health-v-hellerstedt>

Who Decides? The Status of Women's Reproductive Rights In the United States,
<http://www.prochoiceamerica.org/government-and-you/who-decides/>

An Overview of Abortion Laws,

<https://www.guttmacher.org/state-policy/explore/overview-abortion-laws>

Abortion in the Lives of Women Struggling Financially – Why Insurance Coverage Matters,
<https://www.guttmacher.org/about/gpr/2016/07/abortion-lives-women-struggling-financially-why-insurance-coverage-matters>