

U.S. Supreme Court strikes down admitting-privilege restrictions

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What's the news: The U.S. Supreme Court ruled that a Louisiana law infringing on the patient-physician relationship and placing undue burdens on women seeking access to abortion services was unconstitutional—just as it ruled four years ago on a similar Texas law.

In *June Medical v. Russo*, the court agreed with plaintiff physicians who said the law linking their ability to perform abortions with having admitting privilege to a hospital not further than 30 miles away placed an “undue burden” on their patients’ rights. The court issued the same ruling in *Whole Woman’s Health v. Hellerstedt*, a case decided in June 2016.

“Today’s decision is a victory for patients and a strike against government interference in the patient-physician relationship,” said AMA President Susan R. Bailey, MD. “There is no evidence that Louisiana’s admitting privileges requirement improves patients’ safety, and we are pleased by the U.S. Supreme Court’s finding that such regulations are constitutionally invalid.”

Dr. Bailey added that the Louisiana law “interferes with clinical judgment and obstructs women’s access to abortion services in the state.”

The court ruled in the *Whole Woman’s Health* case that there was a “virtual absence of any health benefit” to such admitting-privilege laws. This point was noted in an amicus brief filed by the AMA and the American College of Obstetricians and Gynecologists regarding *June Medical v. Russo*. The brief was joined by the American Academy of Family Physicians, American Academy of Pediatrics, American College of Physicians and nine other health care professional societies.

“Nationwide, qualified physicians and other clinicians who provide abortions are unable to obtain admitting privileges for reasons unrelated to their ability to safely and competently perform abortions,” the associations state in the brief.

“Laws regulating abortion should be evidence-based and supported by a valid medical justification,” they add. “Because laws requiring clinicians who provide abortions to have local admitting privileges are neither, this court should not allow them to stand, regardless of the state from which they originate.”

Writing for the plurality, Justice Stephen Breyer cited the brief twice in his opinion.

While “competency is a factor” in credentialing decisions, “hospitals primarily focus upon a doctor’s ability to perform the inpatient, hospital-based procedures for which the doctor seeks privileges—not outpatient abortions,” Breyer wrote, citing the brief.

He also cited the brief when noting that admitting-privilege requirements do not meaningfully advance the continuity of care.

Justice Breyer’s opinion noted four anonymous plaintiff physicians plus two others who were identified as “Drs. John Doe one through six.” He singled out “Doe 5” in his opinion and noted that the doctor’s inability to obtain admitting privileges was not about competency but more about others seeking to avoid controversy.

Doe 5 had said that the doctor he sought to be his “covering physician” at a nearby hospital was afraid to do so because “it could make him a target of threats and protests,” Breyer wrote.

“Doe 5 was familiar with the problem. Anti-abortion protests had previously forced him to leave his position as a staff member of a hospital northeast of Baton Rouge,” Breyer added. “And activists had picketed the school attended by the children of a former colleague, who then stopped performing abortions as a result.”

Chief Justice John Roberts concurred in the judgment finding the Louisiana law unconstitutional but wrote a separate opinion stating that his decision was based on the principle of *stare decisis*, which calls for fidelity to precedent and “to stand by things decided.”

“The legal doctrine of *stare decisis* requires us, absent special circumstances, to treat like cases alike,” Roberts wrote. “The Louisiana law imposes a burden on access to abortion just as severe as that imposed by the Texas law, for the same reasons. Therefore, Louisiana’s law cannot stand under our precedents.”

Why it’s important: The AMA works to protect the patient-physician relationship from unjustifiable government interference.

“We will always fight government intrusion that compromises access to safe clinical care,” Dr. Bailey said. “As physicians and leaders in medicine, we are pleased that the Supreme Court has recognized

the importance of leaving determination of what constitutes medically necessary treatment where it belongs—in the hands of physicians in consultation with their patients.”

In the amicus brief, the AMA and the other organizations note how restrictions placed on physicians end up as restrictions on patients as well.

“Clinicians’ and patients’ rights and interests are interdependent and closely aligned,” the brief states. “Patients’ access to abortion care depends on their physicians’ ability to provide this care unimpeded by medically unnecessary regulations.”

What’s next: Similar admitting-privilege laws are likely to face a similar fate. But court fights over abortion are likely to continue.

“Roberts’ concurring opinion signals that efforts to pass similar admitting-privileges requirements in other states may not pass constitutional muster,” wrote Amy Howe of *SCOTUS Blog*.

“But the decision was also in many ways a narrow ruling, resting on Roberts’ adherence to the court’s 2016 decision in the Texas case,” Howe added. “With four justices very vocal in their opposition to today’s ruling and a number of challenges to other laws regulating abortion in the pipeline, the legal battle over abortion seems likely to continue into the foreseeable future.”