

## *June Medical Services LLC v. Gee* Backgrounder

In its new term that starts in October 2019, the United States Supreme Court will consider the case *June Medical Services, LLC v. Gee*, which is about an admitting privileges law passed by the Louisiana legislature that is identical to the Texas admitting privileges law struck down by the Supreme Court in *Whole Woman's Health v. Hellerstedt* (2016). Requiring abortion providers to have admitting privileges at a local hospital ignores the fact that abortion is very safe and patients rarely require emergency care, and that admitting privileges can sometimes be impossible for abortion providers to obtain. Requiring admitting privileges does not make patients safer but, instead, just reduces access to abortion by reducing providers and clinics.

### Clinics and Abortion Providers in Louisiana:

- There were five abortion clinics in Louisiana when this case was filed. However, by the time the district court struck down Act 620 (the admitting privileges requirement), there were only **three clinics** remaining in the state.
- The district court found that **only one clinic would remain** open if the admitting privileges requirement goes into effect.
- There were six abortion physicians in Louisiana when this case was filed. However, by the time the district court struck down Act 620, there were only five physicians providing abortion services in the entire state.
- The district court found that **only one physician** would continue to provide abortions if Act 620 goes into effect, in a state where approximately 10,000 people obtain abortion services every year.

### Legal Claims and Questions Presented

- Our legal claim is that Louisiana's admitting privileges law, Act 620, violates the constitutional rights of women in Louisiana because the law imposes significant burdens on abortion access without providing any benefit to women's health or safety.
- In our petition for certiorari, we have asked the U.S. Supreme Court to decide this question:
  - In *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), this Court held that a state law requiring physicians who perform abortions to have admitting privileges at a local hospital was unconstitutional because it imposed an undue burden on women seeking abortions. The U.S. Court of Appeals for the Fifth Circuit upheld an admitting privileges law in Louisiana that is identical to the one this Court struck down. This presents the following issue: Whether the Fifth Circuit's decision upholding Louisiana's law requiring physicians who perform abortions to have admitting privileges at a local hospital conflicts with this Court's binding precedent in *Whole Woman's Health*.
- Louisiana maintains that Act 620 is constitutional and that *Whole Woman's Health* is distinguishable.

- In addition, Louisiana has asked the U.S. Supreme Court to consider whether our clinic and physician plaintiffs have standing to assert the constitutional claims of their patients.

### Louisiana Admitting Privileges Law (Act 620) Compared to Texas Admitting Privileges Law (HB 2)

- Louisiana’s admitting privileges law, Act 620, requires an abortion provider to have admitting privileges at a hospital within 30 miles of where any abortion is performed.
- Act 620 is substantively identical to H.B.2, the Texas law that the U.S. Supreme Court struck down in *Whole Woman’s Health*.

Act 620	HB 2
“On the date the abortion is performed or induced, a physician performing or inducing an abortion shall have active admitting privileges at a hospital that is located not further than thirty miles from the location at which the abortion is performed or induced.”	“A physician performing or inducing an abortion must, on the date the abortion is performed or induced, have active admitting privileges at a hospital that: is located not further than 30 miles from the location at which the abortion is performed or induced”

- Violations of Act 620 by a physician are punishable by imprisonment, fines, and civil liability. A clinic that employs an abortion provider without admitting privileges also may lose its license.

### Key District Court Findings

**The District Court found that Louisiana Act 620 does not advance health or safety or ensure that physicians are competent to provide abortion care:**

- Abortion “is one of the safest medical procedures in the United States.” Complications from abortion are rare and most can be managed in the clinic. “Serious complications requiring transfer directly from the clinic to a hospital are extremely rare.”
- Act 620 “would do little or nothing for women’s health.”
- Act 620’s “requirement that abortion providers have active admitting privileges . . . does not conform to prevailing medical standards and will not improve the safety of abortion in Louisiana.”
- There is no evidence in Louisiana “of any instance in which an admitting privileges requirement would have helped even one woman obtain better treatment.”
- Act 620 does not serve “any relevant credentialing function” in Louisiana because even if hospitals consider a physician’s competency when reviewing an application for admitting privileges, “hospitals may deny privileges or decline to consider an application for myriad reasons unrelated to competency.”

**The District Court found that Louisiana Act 620 would impose significant burdens on abortion access:**

- Act 620 would “cripple women’s ability to have an abortion” because Louisiana “would be left with one” abortion provider at one clinic.

- “A single remaining physician cannot possibly meet the level of services needed” by approximately 10,000 women who obtain abortions in Louisiana each year.
- Because the single remaining physician only provides abortion care prior to 17 weeks LMP, Act 620 will leave “no physician in Louisiana providing abortions between 17 weeks and 21 weeks, six days gestation” (the legal limit in Louisiana). Women delayed in accessing care until “this stage of their pregnancies would be denied all access to abortion in Louisiana.”
- Women seeking abortions in Louisiana prior to 17 weeks gestation will be left with “fewer physicians,” “longer wait times for appointments, increased crowding and increased associated health risks.”
- Many women “will have to travel much longer distances,” imposing “severe burdens, which will fall most heavily on low-income women.”
- The District Court found that all of Louisiana’s abortion providers engaged in “good faith efforts” to comply with Act 620 and obtain admitting privileges.

## Case History

- **August 22, 2014:** Center files challenge to the admitting privileges law (Act 620) in U.S. District Court for the Middle District of Louisiana. Shortly after case is filed, the District Court grants our request for a Temporary Restraining Order to block the law while abortion providers in Louisiana pursue admitting privileges.
- **January 26, 2016:** District Court grants a preliminary injunction barring enforcement of Act 620. Louisiana takes an immediate appeal.
- **February 24, 2016:** U.S. Court of Appeals for the Fifth Circuit lifts the preliminary injunction.
- **March 5, 2016:** U.S. Supreme Court grants Center’s request for an emergency stay of the Fifth Circuit’s decision. Act 620 once again is blocked.
- **June 27, 2016:** U.S. Supreme Court decides *Whole Woman’s Health v. Hellerstedt* and declares Texas’s admitting privileges law unconstitutional. Fifth Circuit sends our Louisiana case back to the District Court for further consideration in light of *Whole Woman’s Health*.
- **April 26, 2017:** District Court declares Act 620 permanently unconstitutional under *Whole Woman’s Health* and enters a permanent injunction. Louisiana appeals.
- **September 26, 2018:** Fifth Circuit reverses the District Court’s decision, declares Act 620 constitutional, and vacates the permanent injunction in a split (2-1) decision.
- **January 18, 2019:** Fifth Circuit votes 9-6 to deny the Center’s petition to rehear the appeal en banc.
- **February 7, 2019:** U.S. Supreme Court by a 5-4 vote grants Center’s request for an emergency stay of the Fifth Circuit’s decision. Chief Justice Roberts votes with the majority in favor of the stay. Justice Kavanaugh files a dissent. Stay temporarily blocks enforcement of Act 620 while the U.S. Supreme Court considers whether to review the case.
- **April 17, 2019:** Plaintiffs filed petition for writ of certiorari.
- **May 20, 2019:** Defendants filed conditional cross-petition for a writ of certiorari.

## Case Caption

- *June Medical Services L.L.C. et al. v. Dr. Rebekah Gee*
- U.S. Supreme Court Case No. 18-1323 / No. 18-1460

## Plaintiffs & Counsel

- The district court found that **only one physician** would continue to provide abortions if Act 620 goes into effect, in a state where approximately 10,000 people obtain abortion services every year.
- The Center for Reproductive Rights (the Center) is lead counsel in this case.
- The Center represents 3 plaintiffs:
  - June Medical Services, the corporate name of Hope Clinic:
    - Hope is an independent abortion clinic that has been providing safe abortion services in Shreveport, Louisiana for decades; and,
  - Dr. John Doe 1 and Dr. John Doe 2, physicians who provide abortion care.
    - Doe 1 is a physician at Hope.
    - Doe 2 is a backup physician at Hope.
- The Center also litigated *Whole Woman's Health v. Hellerstedt* and was lead counsel in that case, which the Supreme Court decided just three years ago. *Whole Woman's Health* concerned two Texas abortion restrictions, including a Texas admitting privileges requirement that is identical to the Louisiana law, and the Supreme Court struck down both laws as unconstitutional.

## Defendant

- Defendant is Dr. Rebekah Gee, the Secretary of the Louisiana Department of Health and Hospitals. Dr. Gee is responsible for enforcing Louisiana's admitting privileges requirement.