



LIFE LITIGATION REPORT—JULY 2020

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June Medical Services v. Russo Summary:

On June 29, 2020, the Supreme Court struck down Louisiana’s admitting privileges law (“Act 620”) as unconstitutional. Act 620 required abortion providers to obtain hospital admitting privileges within 30 miles of their clinic. Notably, the Supreme Court had struck down a virtually identical admitting privileges statute in *Whole Woman’s Health v. Hellerstedt* in 2016. Justice Breyer, joined by Justices Ginsburg, Sotomayor, and Kagan, held that Act 620 posed a substantial obstacle to women seeking abortion in Louisiana. The plurality further held that the State had waived its challenge to plaintiffs’ third-party standing, and that even if it had not, third-party standing by abortionists was “established” in Supreme Court case law.

Chief Justice Roberts concurred in the judgment, providing the critical vote to strike down Act 620. Under *stare decisis*, Roberts determined the Court must adhere to *Whole Woman’s Health*. However, Roberts rejected *Whole Woman’s Health*’s balancing test, noting that “Under *Casey* [’s undue burden test], abortion regulations are valid so long as they do not pose a substantial obstacle and meet the threshold requirement of being ‘reasonably related’ to a ‘legitimate purpose.’”

Justice Thomas dissented, insisting that abortion provider plaintiffs do not have standing to represent women seeking abortion. Third-party standing is constitutional and cannot be waived, he stated. Justice Thomas repeated at length his by-now well-rehearsed view on why the Constitution does not support abortion jurisprudence.

Justice Alito dissented, joined by Justice Gorsuch, and partially joined by Justices Thomas and Kavanaugh. Justice Alito rejected *Whole Woman’s Health*’s balancing test because it conflicts with *Casey*’s undue burden standard. *June Medical Services* is a pre-enforcement statutory challenge while *Whole Woman’s Health* is distinguishable as a post-enforcement challenge, he said. And third-party standing is not appropriate where there is a conflict of interest, such as between the abortion providers and their patients in this case, he charged.

Justice Gorsuch dissented for a host of reasons, indicating the plurality ignored the legislative findings that Act 620 would ensure health and safety standards. Plaintiffs do not have proper standing to bring this lawsuit, Justice Gorsuch stated. The plurality did not review de novo the District Court's application of the law, and the Court has not provided a clear and predictable standard for abortion cases, he charged.

Justice Kavanaugh dissented, rejecting *Whole Woman's Health's* cost-benefit standard. Justice Kavanaugh would remand the case for additional factfinding.

Life Litigation Report:

Alabama

Federal Court of Appeals

- **Parental notice** - *Reproductive Health Services v. Bailey* (11th Cir. No. 17-13561) (oral argument held Apr. 10, 2018; pending decision)

Federal District Court

- **Gestational limits** - *Robinson v. Marshall* (M.D. Ala. No. 19-365) (ban with narrow exceptions)

Alaska

State Court

- **Physician only** – *Planned Parenthood of the Great Northwest and the Hawaiian Islands v. Alaska* (Super. Ct. for Alaska 3d Judicial Dist. at Anchorage No. 3AN-1-11710CI)

Arizona

Federal District Court

- **Omnibus challenge to abortion regulations** - *Planned Parenthood Arizona v. Brnovich* (D. Az. No. 19-207) (discovery held until 60 days after *June Medical Serv.* decision)

Arkansas

Federal Court of Appeals

- **Gestational limits/fetal remains/prenatal non-discrimination** - *Hopkins v. Jegley* (8th Cir. No. 17-2879) (dismemberment/sex) (held pending *June Medical Serv.* decision).

- **Gestational limits/physician only laws/prenatal non-discrimination** - *Little Rock Family Planning Services v. Rutledge* (8th Cir. No. 19-2690) (18-week limit/Down syndrome) (pending oral argument)

Federal District Court

- **Abortion funding** - *Planned Parenthood v. Gillespie* (E.D. Ark. No. 15-566) (Medicaid) (proceedings stayed for COVID)

California

Federal Court of Appeals

- **Title X** - *Essential Access Health, Inc. v. Azar* (9th Cir. No. 19-15979); and *California v. Azar* (9th Cir. No. 19-15974); together with *Oregon v. Azar/AMA v. Azar* (9th Cir. No. 19-35386) and *Washington v. Azar/National Family Planning & Reproductive Health Association* (9th Cir. No. 19-35394) (*en banc* court of appeals ruled 7-4 on Feb. 24, 2020 that Protect Life Rule was constitutional and not a violation of the Administrative Procedure Act)
- **IVF** – *In re Pacific Fertility Center Litigation* (9th Cir. No. 19-15888) (9th Cir. affirmed in part and reversed in part on motion to compel arbitration)
- **Conscience rights** – *Skyline Wesleyan Church v. Cal. Dep’t of Health* (9th Cir. No. 18-55451) (Cal. abortion insurance mandate)

Federal District Court

- **Conscience rights** - *California v. Azar & Little Sisters of the Poor* (N.D. Cal. No. 17-5783) (Affordable Care Act Contraception Mandate) (stayed pending *Little Sisters* SCOTUS decision)
- **Conscience rights** - *California v. Azar* (N.D. Cal. No. 19-2769) (lead case) (HHS Conscience Protection Rule) (rule put on hold until November 22, 2019; hearing October 10, 2019)
- **Conscience rights** - *City & County of San Francisco v. Azar* (N.D. Cal. No. 19-2405) (consolidated with No. 19-2769) (HHS Conscience Protection Rule)
- **Conscience rights** - *County of Santa Clara v. U.S. Department of Health & Human Services* (N.D. Cal. No. 19-2916) (consolidated with No. 19-2769) (HHS Conscience Protection Rule)
- **Free speech** - *Center for Medical Progress; David Daleiden v. Planned Parenthood Federation of America* (N.D. Cal. No. 16-236) (undercover videos)
- **Free speech** – *Center for Medical Progress v. Becerra* (C.D. Cal. No. 8:20-cv-00891) (undercover videos)

Colorado

State Court

- **Personhood** – *People v. Jones* (Colo. No. 18SC445) (child abuse statute)

Connecticut

Federal District Court

- **Pregnancy resource center** – *Caring Families v. City of Hartford* (D. Conn. No. 3:19-cv-584)

Delaware

No cases reported

District of Columbia

Federal Court of Appeals

- **Abortion access in custody** - *Garza v. Azar* (D.C. Cir. No. 18-5093) (final injunction of June 14, 2019 requiring Office of Refugee Resettlement to facilitate access to abortion; time for petition for certiorari extended to Nov. 8, 2019 allowed to lapse. CASE CONCLUDED)

Florida

State Court

- **Informed consent** - *Gainesville Woman Care v. Florida* (Fla. 2d. Cir. No. 2015-CA-001323) (reflection period)

Georgia

Federal District Court

- **Gestational limits** - *SisterSong Women of Color Reproductive Justice Collective v. Kemp* (N.D. Ga. No. 19-2973) (heartbeat)
- **Free speech** – *SFLA at Georgia Tech v. Regents of the University System of Georgia* (N.D. Ga. No. 1:20-CV-1422-SDG 440)

State Court

- **Child custody** – *Mathenia v. Brumbelow* (Ga. Super. Ct. for Habersham Cty. No. 16CV0608).

Hawaii

Federal District Court

- **Chemical abortions (RU-486)** - *Chelius v. Wright* (D. Haw. No. 17-493) (stayed pending *June Medical Serv.* decision)

Idaho

Federal District Court

- **Physician only laws** - *Planned Parenthood of the Great Northwest & the Hawaiian Islands v. Wasden* (D. Idaho 18-555)
- **Chemical abortions** – *Gomperts et al v. Azar et al* (D. Idaho No. 1:19-cv-00345-DCN)

Illinois

U.S. Supreme Court

- **Free speech** - *Price v. City of Chicago* (No. 18-1516) (“bubble zone” law) (Cert denied July 2, 2020)

Federal District Court

- **Free speech** - *NIFLA v. Rauner* (N.D. Ill. No. 16-50310) (anti-pregnancy center law)

State Court

- **Conscience protections** – *Illinois Baptist State Association v. Illinois Department of Insurance* (Ill. Cir. Ct. of the 7th Judicial Cir. Sangamon Cty. No. 2020MR325) (abortion insurance mandate)

Indiana

U.S. Supreme Court

- **Clinic licensing** - *Hill v. Whole Woman’s Health Alliance* (No. 19-743) (application of *Hellerstedt* analysis to decision denying abortion clinic a license) (Cert Denied July 2, 2020)
- **Informed consent** - *Box v. Planned Parenthood of Indiana & Kentucky* (No. 18-1019) (ultrasound) (vacated and remanded for further consideration in light of *June Medical Serv.* July 2, 2020)
- **Parental involvement** - *Box v. Planned Parenthood of Indiana & Kentucky* (No. 19-816) (application of *Hellerstedt* analysis to parental involvement law). (vacated and remanded for further consideration in light of *June Medical Serv.* July 2, 2020)

Federal Court of Appeals

- **Omnibus challenge to abortion regulations** - **Whole Woman’s Health Alliance v. Hill* (7th Cir. No. 19-2051) (preliminary injunction allowing WWH to operate without a license upheld; petition for writ of certiorari filed (S. Ct. 19-743) and pending)

Federal District Court

- **Gestational limits** - *Bernard v. Individual Members of the Indiana Medical Licensing Board* (S.D. Ind. No. 19-1160) (dismemberment)
- **Abortion reporting** - *Planned Parenthood of Indiana & Kentucky. v. Commissioner, Indiana State Department of Health* (S.D. Ind. No. 18-1219)
- **Omnibus challenge to abortion regulations** - **Whole Woman's Health Alliance v. Hill* (S.D. Ind. No. 18-1904)

Iowa

State Court

- **Informed consent** – *Planned Parenthood of the Heartland, Inc. v. Reynolds* (Ia. D. Ct. for Johnson County No. ____) (reflection period) (temporarily enjoined June 30, 2020)
- **Funding** – *Planned Parenthood of the Heartland, Inc. v. Reynolds* (Ia. D. Ct. for Polk County No. EQCE084508) (sex education)

Kansas

No cases reported

Kentucky

Federal Court of Appeals

- **Gestational limits** - *EMW Women's Surgical Center v. Beshear* (6th Cir. No. 19-5516) (dismemberment) (Def. petition for rehearing en banc June 18, 2020)
- **Abortion clinic/provider regulations**- *EMW Women's Surgical Center v. Glisson* (6th Cir. No. 18-6161) (transfer agreement) (oral argument held Aug. 8, 2019; pending decision)
- **Informed consent**- *EMW Women's Surgical Center v. Beshear* (6th Cir. Nos. 17-6151, 17-6183) (ultrasound) (law affirmed against First Amendment challenge; petition for writ of certiorari (S. Ct. 19-417) denied Dec. 9, 2019)

Federal District Court

- **Gestational limits** - **EMW Women's Surgical Center v. Beshear* (W.D. Ky. No. 19-178) (heartbeat)
- **Prenatal non-discrimination** - **EMW Women's Surgical Center v. Beshear* (W.D. Ky. No. 19-178)

Louisiana

U.S. Supreme Court

- **Abortion clinic/provider regulations/third-party standing** - **June Medical Services v. Russo* (No. 18-1323) (admitting privileges); and **Russo v.*

June Medical Services (No. 18-1460) (abortion provider standing) Petition and cross-petition granted, oral argument heard Mar. 4, 2020; SCOTUS reversed June 29, 2020.

Federal Court of Appeals

- **Abortion clinic/provider regulations** - *Planned Parenthood Gulf Coast v. Russo* (5th Cir. No. 18-30699) (clinic licensing) (oral argument held Jan. 9, 2019)
- **Omnibus challenge to abortion regulations** - *June Medical Services v. Gee* (5th Cir. No. 19-30353) (mandamus denied by 5th Cir. Oct. 18, 2019)

Federal District Court

- **Abortion funding** - *Planned Parenthood Gulf Coast v. Gee* (M.D. La. No. 15-565) (Medicaid) (case stayed pending outcome of Fifth Circuit rehearing *en banc* of *Planned Parenthood of Greater Texas v. Smith*)
- **Omnibus challenge to abortion regulations** - *June Medical Services v. Gee* (M.D. La. No. 16-444) (minibus challenging six 2016 laws)

State Court

- **Abortion clinic/provider regulations** - *June Medical Services v. Louisiana Department of Health* (19th J. Dist. Ct. No. 657201)

Maine

Federal District Court

- **Title X** - *Family Planning Association of Maine v. U.S. Department of Health & Human Services* (D. Me. No. 19-100) (granted Defs.' motion to dismiss)

State Court

- **Abortion funding** - *Mabel Wadsworth Women's Health Center v. Hamilton* (Me. S. Ct. No. Cum-17-494) (MaineCare) (granted motion to dismiss the appeal as moot Jan. 14, 2020)

Maryland

Federal Court of Appeals

- **Title X** - *Mayor and City Council v. Azar* (4th Cir. No. 19-1614 and No. 20-1215) (en banc oral argument heard May 7, 2020)

Federal District Court

- **Abortion funding** - *Planned Parenthood of Maryland, Inc. v. Azar* (D. Md. No. 1:20-cv-361) (separate insurance billing)

- **Chemical abortions (RU-486)** – *American College of Obstetricians and Gynecologists v. U.S. Food and Drug Administration* (D. Md. No. 8:20-cv-01320-TDC) (Complaint filed May 27, 2020)

Massachusetts

No cases reported

Michigan

No cases reported

Minnesota

No cases reported

Mississippi

Federal Court of Appeals

- **Gestational limits** - **Jackson Women's Health v. Currier* (5th Cir. No. 18-60868) (15-week limit) (judgment and final injunction affirmed Dec. 13, 2019; petition for rehearing en banc denied Jan. 17, 2020. Petition for certiorari due Jun. 15, 2020 per Sup. Ct. Order dated Mar. 19, 2020) (adding 60 days to time to petition for writ of certiorari.)
- **Gestational limits** - **Jackson Women's Health v. Currier* (5th Cir. No. 19-60455) (heartbeat) (judgment and final injunction affirmed Feb. 20, 2020. Petition for certiorari due Jul. 25, 2020 per Sup. Ct. Order dated Mar. 19, 2020 (adding 60 days to time to petition for writ of certiorari)).

Federal District Court

- **Omnibus challenge to abortion regulations** - **Jackson Women's Health v. Currier* (S.D. Miss. No. 18-171)

State Court

- **Free speech** – *Beavers v. City of Jackson, Mississippi* (S.D. Miss. No. 3:19-cv-735-DPJ-FKB) (buffer zone)

Missouri

Federal Court of Appeals

- **Gestational limits** - *Reproductive Health Services of Planned Parenthood of the St. Louis Region, Inc. v. Parson* (8th Cir. No. 19-2882) (8-week, 14-week, 18-week, 20-week) (pending oral argument)
- **Informed consent** – *Doe v. Parson* (8th Cir. No. 19-1578) (life at conception) (affirmed June 9, 2020)

State Court

- **Abortion funding** – *Planned Parenthood of St. Louis Region v. Department of Social Services, Division of Medical Services* (Mo. No. SC98020) (Medicaid)

Montana

No cases reported

Nebraska

No cases reported

Nevada

No cases reported

New Hampshire

No cases reported

New Jersey

Federal District Court

- **Free speech** - *Turco v. City of Englewood, N.J.* (D.N.J. No. 15-3008) (buffer zone)

New Mexico

No cases reported

New York

U.S. Supreme Court

- **First Amendment** – *U.S. Agency for International Development v. Alliance for Open Society International, Inc.* (No. 19-177) (decision June 30, 2020)

Federal District Court

- **Conscience rights** - *National Family Planning & Reproductive Health Association v. Azar* (S.D.N.Y. No. 19-5435) (consolidated with No. 19-4676) (HHS Conscience Protection Rule)
- **Conscience rights** - *New York v. U.S. Department of Health & Human Services* (S.D.N.Y. No. 19-4676) (lead case) (HHS Conscience Protection Rule) (appealed Jan. 3, 2020)
- **Conscience rights** - *Planned Parenthood Federation of America v. Azar* (S.D.N.Y. No. 19-5433) (consolidated with No. 19-4676) (HHS Conscience Protection Rule)
- **Reproductive Health Act** – *CompassCare, First Bible Baptist Church and NIFLA v. Cuomo* (N.D.N.Y. No. 1:19-cv-1409 (TJM/DJS))

North Carolina

Federal Court of Appeals

- **Gestational limits** - *Bryant v. Woodall* (4th Cir. No. 19-1685) (20-week limit) (pending oral argument)

North Dakota

Federal District Court

- **Chemical abortions (RU-486)** - *American Medical Association v. Stenehjem* (D.N.D. No. 19-125)
- **Conscience rights** - *Christian Employers Alliance v. Azar* (D.N.D. No. 16-309) (Affordable Care Act Contraception Mandate)
- **Informed consent** - *American Medical Association v. Stenehjem* (D.N.D. No. 19-125) (abortion pill reversal)

Ohio

U.S. Supreme Court

- **Chemical abortions (RU-486)** - *Yost, et al. v. Planned Parenthood Southwest Ohio Region, et al.* (No. 19-677) (Cert. Denied July 2, 2020)

Federal Court of Appeals

- **Prenatal non-discrimination** - *Preterm-Cleveland v. Acton* (6th Cir. No. 18-3329) (Down syndrome) (oral argument held before en banc court March 11, 2020; pending decision)

Federal District Court

- **Gestational limits** - *Planned Parenthood Southwest Ohio Region v. Yost* (S.D. Ohio No. 19-118) (15-week)
- **Gestational limits** - *Preterm-Cleveland v. Himes* (S.D. Ohio No. 19-360) (heartbeat)

Oklahoma

State Court

- **Physician only laws** – *Southwest Women’s Center v. Hunter* (Okla. Cty. Dist. Ct. No. CV-2019-2506)
- **Abortion pill reversal** – *Tulsa Women’s Reproductive Center v. Hunter* (Okla. Cty. Dist. Ct. No. CV-2019-2176)
- **Gestational limits/informed consent** – *Tulsa Women’s Reproductive Center v. Hunter* (Okla. No. 118292) (dismemberment/72-hour reflection period)

Oregon

Federal District Court

- **Free Speech** – *Chemeketa Students for Life v. Members of the Chemeketa Board of Education* (D. Or. No. 6:20-cv-00742-MC)

Pennsylvania

U.S. Supreme Court

- **Rights of conscience** - *Little Sisters of the Poor v. Pennsylvania*, 19-431 (constitutionality of expanded exemptions from HHS birth control mandate, and standing of Little Sisters) & *Trump v. Pennsylvania*, 19-454 (constitutionality of expanded exemptions from HHS birth control mandate). Argued Apr. 29, 2020; decision expected by the end of the term.
- **First Amendment** – *Bruni v. City of Pittsburgh* (3d Cir. No. 18-1084) (petition for writ of certiorari filed (S. Ct. 19-1184)) (Conference set for July 1, 2020)
- **First Amendment** – *Reilly v. City of Harrisburg* (3d Cir. No. 18-2884) (petition for writ of certiorari filed (S. Ct. 19-983)) (Cert. Denied July 2, 2020)

State Court

- **Abortion funding** - *Allegheny Reproductive Health Center, et al. v. Pennsylvania Department of Human Services* (Penn. Commonwealth Ct. No. 26-MD-2019) (Medicaid)

Rhode Island

No cases reported

South Carolina

Federal Court of Appeals

- **Abortion funding** - *Planned Parenthood South Atlantic v. Baker* (4th Cir. No. 18-2133) (Medicaid) (affirmed by decision Oct. 29, 2019; petition filed in S. Ct. Mar. 27, 2020)

South Dakota

Federal District Court

- **Informed consent** - *Planned Parenthood Minnesota, North Dakota, South Dakota v. Daugaard* (D.S.D. 11-4071)

Tennessee

Federal District Court

- **Gestational limits/Prenatal non-discrimination** – *Memphis Center for Reproductive Health v. Slatery* (M.D. Tn. No. 3:20-cv-00501) (heartbeat, sex, race, Down syndrome)
- **Zoning ordinance** – *FemHealth USA, Inc. v. City of Mount Juliet* (M.D. Tn. No. 3:19-cv-01141)

Texas

Federal Court of Appeals

- **Gestational limits** - *Whole Women's Health v. Paxton* (5th Cir. No. 17-51060) (dismemberment) (case stayed pending disposition of *June Medical Services v. Russo*)
- **Abortion funding** - *Planned Parenthood of Greater Texas Family Planning & Preventative Health Services v. Phillips* (5th Cir. No. 17-50282) (Medicaid) (rehearing *en banc* held May 14, 2019; pending decision)
- **Fetal remains**- *Whole Women's Health v. Phillips* (5th Cir. No. 18-50730) (oral argument held Sep. 5, 2019; pending decision)

Federal District Court

- **Omnibus challenge to abortion regulations** - *Whole Women's Health Association v. Paxton* (W.D. Tex. No. 18-500)
- **Title X** – *Deanda v. Azar II et al* (N.D. Tex. No. 2:20-cv-00092-Z)
- **Sanctuary City** – *Texas Equal Access Fund and Lilith Fund for Reproductive Equity v. City of Waskom, Texas et al* (E.D. Tex. No. 2:20-cv-00055) (Pls. withdrew lawsuit after cities amended ordinances)

Utah

Federal District Court

- **Gestational limits** - *Planned Parenthood Association of Utah v. Miner* (D. Utah No. 19-238) (18-week)

Vermont

No cases reported

Virginia

Federal District Court

- **Omnibus challenge to abortion regulations** - *Falls Church Medical Center v. Oliver* (E.D. Va. No. 18-428)

Washington

Federal District Court

- **Conscience rights** - *Cedar Park Assembly of God of Kirkland, Wash. v. Kreidler* (W.D. Wash. No. 19-518) (insurance coverage of abortion)
- **Abortion funding** – *Washington v. Azar* (E.D. Wash. No. 2:20-cv-00047-SAB) (separate insurance billing)
- **First Amendment** – *Planned Parenthood of Greater Washington and North Idaho v. Church at Planned Parenthood* (Spokane Cty. Super. Ct. No.____)

West Virginia

No cases reported

Wisconsin

Federal Court of Appeals

- **Chemical Abortion (RU-486)** - **Planned Parenthood of Wisconsin v. Kaul* (7th Cir. No. 19-1835) (physician-only requirement, same physician must examine and prescribe pill, telemedicine ban) (injunction affirmed Nov. 7, 2019)
- **Physician only laws** - **Planned Parenthood of Wisconsin v. Kaul* (7th Cir. No. 19-1835) (for chemical abortion) (injunction affirmed Nov. 7, 2019)

Wyoming

No cases reported