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Texas' Dangerous Abortion Law at the Supreme Court

By **THE EDITORIAL BOARD** MARCH 2, 2016

States like Texas pass laws strictly regulating abortion clinics for one reason: to make it hard, if not impossible, for women to obtain a safe and legal abortion.

But the Supreme Court justices often act as though political reality does not penetrate the court's thick walls. So it was a relief when, during oral arguments on Wednesday, the four liberal justices took turns tearing apart the claim by Texas lawmakers that their 2013 law — which has already shut down about half the roughly 40 clinics in the state — is about nothing more than protecting women's health.

The case before the court, Whole Woman's Health v. Hellerstedt, is a challenge to that law, which requires abortion clinics to meet the strict standards of ambulatory surgical centers and to require their doctors to have admitting privileges at local hospitals. Versions of this law are on the books in 23 other states, part of a carefully designed, decades-long effort to undermine women's constitutional right to abortions.

In a major 1992 decision, Planned Parenthood of Southeastern Pennsylvania v. Casey, the court reaffirmed that right, and invalidated restrictions that impose an "undue burden" on women seeking an abortion before the fetus is viable. Among these, the court said in an opinion co-written by Justice Anthony Kennedy, are "unnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion."

That is the Texas law in a nutshell. It forces the closing of clinics for reasons that have nothing to do with protecting women's health. The state's solicitor general, Scott Keller, tried to defend the law, but the liberal justices would not give him an inch.

When Mr. Keller argued that women in far west Texas could simply drive to an abortion clinic just over the New Mexico border, Justice Ruth Bader Ginsburg reminded him that New Mexico does not require its clinics to meet Texas' standards, or its doctors to have admitting privileges. "If your argument is right," she said, "then New Mexico is not an available way out for Texas, because Texas says to protect our women, we need these things."

When Mr. Keller admitted that there is no evidence — not in Texas or anywhere else — that the admitting-privileges requirement has had any effect on women's health, Justice Stephen Breyer asked him, "What is the benefit to the woman of a procedure that is going to cure a problem of which there is not one single instance in the nation?"

And when Mr. Keller pressed his claim that the law was a reasonable health regulation, Justice Elena Kagan asked him why such regulations did not apply to other, much higher-risk procedures, like colonoscopies and liposuction. "You're saying, that's O.K., we get to set much higher standards for abortion," Justice Kagan said. "And I just want to know why that is?"

The real answer, which Mr. Keller could not say out loud, was that anti-abortion activists, who drafted the Texas law and many others like it around the country, know that claims of "protecting women's health" have succeeded in giving cover to laws whose true purpose is to end access to legal abortion in America.

Justice Kennedy, who will very likely be the deciding vote in the case, gave little indication of his

views. But if he follows his own reasoning from 1992, he will vote to strike these laws down.

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