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SUPREME COURT OF THE UNITED STATES

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**WHOLE WOMAN'S HEALTH ET AL. v. HELLERSTEDT,
COMMISSIONER, TEXAS DEPARTMENT OF STATE
HEALTH SERVICES, ET AL.****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT**

No. 15–274. Argued March 2, 2016—Decided June 27, 2016

A “State has a legitimate interest in seeing to it that abortion . . . is performed under circumstances that insure maximum safety for the patient.” *Roe v. Wade*, 410 U. S. 113, 150. But “a statute which, while furthering [a] valid state interest, has the effect of placing a substantial obstacle in the path of a woman’s choice cannot be considered a permissible means of serving its legitimate ends,” *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833, 877 (plurality opinion), and “[u]nnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on the right,” *id.*, at 878.

In 2013, the Texas Legislature enacted House Bill 2 (H. B. 2), which contains the two provisions challenged here. The “admitting-privileges requirement” provides that a “physician performing or inducing an abortion . . . must, on the date [of service], have active admitting privileges at a hospital . . . located not further than 30 miles from the” abortion facility. The “surgical-center requirement” requires an “abortion facility” to meet the “minimum standards . . . for ambulatory surgical centers” under Texas law. Before the law took effect, a group of Texas abortion providers filed the *Abbott* case, in which they lost a facial challenge to the constitutionality of the admitting-privileges provision. After the law went into effect, petitioners, another group of abortion providers (including some *Abbott* plaintiffs), filed this suit, claiming that both the admitting-privileges and the surgical-center provisions violated the Fourteenth Amendment, as interpreted in *Casey*. They sought injunctions preventing enforcement of the admitting-privileges provision as applied to physi-

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cians at one abortion facility in McAllen and one in El Paso and prohibiting enforcement of the surgical-center provision throughout Texas.

Based on the parties' stipulations, expert depositions, and expert and other trial testimony, the District Court made extensive findings, including, but not limited to: as the admitting-privileges requirement began to be enforced, the number of facilities providing abortions dropped in half, from about 40 to about 20; this decrease in geographical distribution means that the number of women of reproductive age living more than 50 miles from a clinic has doubled, the number living more than 100 miles away has increased by 150%, the number living more than 150 miles away by more than 350%, and the number living more than 200 miles away by about 2,800%; the number of facilities would drop to seven or eight if the surgical-center provision took effect, and those remaining facilities would see a significant increase in patient traffic; facilities would remain only in five metropolitan areas; before H. B. 2's passage, abortion was an extremely safe procedure with very low rates of complications and virtually no deaths; it was also safer than many more common procedures not subject to the same level of regulation; and the cost of compliance with the surgical-center requirement would most likely exceed \$1.5 million to \$3 million per clinic. The court enjoined enforcement of the provisions, holding that the surgical-center requirement imposed an undue burden on the right of women in Texas to seek previability abortions; that, together with that requirement, the admitting-privileges requirement imposed an undue burden in the Rio Grande Valley, El Paso, and West Texas; and that the provisions together created an "impermissible obstacle as applied to all women seeking a previability abortion."

The Fifth Circuit reversed in significant part. It concluded that res judicata barred the District Court from holding the admitting-privileges requirement unconstitutional statewide and that res judicata also barred the challenge to the surgical-center provision. Reasoning that a law is "constitutional if (1) it does not have the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus and (2) it is reasonably related to . . . a legitimate state interest," the court found that both requirements were rationally related to a compelling state interest in protecting women's health.

Held:

1. Petitioners' constitutional claims are not barred by res judicata. Pp. 10–18.

(a) Res judicata neither bars petitioners' challenges to the admitting-privileges requirement nor prevents the Court from awarding fa-

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cial relief. The fact that several petitioners had previously brought the unsuccessful facial challenge in *Abbott* does not mean that claim preclusion, the relevant aspect of res judicata, applies. Claim preclusion prohibits “successive litigation of the very same claim,” *New Hampshire v. Maine*, 532 U. S. 742, 748, but petitioners’ as-applied postenforcement challenge and the *Abbott* plaintiffs’ facial pre-enforcement challenge do not present the same claim. Changed circumstances showing that a constitutional harm is concrete may give rise to a new claim. *Abbott* rested upon facts and evidence presented before enforcement of the admitting-privileges requirement began, when it was unclear how clinics would be affected. This case rests upon later, concrete factual developments that occurred once enforcement started and a significant number of clinics closed.

Res judicata also does not preclude facial relief here. In addition to requesting as-applied relief, petitioners asked for other appropriate relief, and their evidence and arguments convinced the District Court of the provision’s unconstitutionality across the board. Federal Rule of Civil Procedure 54(c) provides that a “final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings,” and this Court has held that if the arguments and evidence show that a statutory provision is unconstitutional on its face, an injunction prohibiting its enforcement is “proper,” *Citizens United v. Federal Election Comm’n*, 558 U. S. 310, 333. Pp. 10–15.

(b) Claim preclusion also does not bar petitioners’ challenge to the surgical-center requirement. In concluding that petitioners should have raised this claim in *Abbott*, the Fifth Circuit did not take account of the fact that the surgical-center provision and the admitting-privileges provision are separate provisions with two different and independent regulatory requirements. Challenges to distinct regulatory requirements are ordinarily treated as distinct claims. Moreover, the surgical-center provision’s implementing regulations had not even been promulgated at the time *Abbott* was filed, and the relevant factual circumstances changed between the two suits. Pp. 16–18.

2. Both the admitting-privileges and the surgical-center requirements place a substantial obstacle in the path of women seeking a previability abortion, constitute an undue burden on abortion access, and thus violate the Constitution. Pp. 19–39.

(a) The Fifth Circuit’s standard of review may be read to imply that a district court should not consider the existence or nonexistence of medical benefits when deciding the undue burden question, but *Casey* requires courts to consider the burdens a law imposes on abortion access together with the benefits those laws confer, see 505 U. S.,

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at 887–898. The Fifth Circuit’s test also mistakenly equates the judicial review applicable to the regulation of a constitutionally protected personal liberty with the less strict review applicable to, *e.g.*, economic legislation. And the court’s requirement that legislatures resolve questions of medical uncertainty is inconsistent with this Court’s case law, which has placed considerable weight upon evidence and argument presented in judicial proceedings when determining the constitutionality of laws regulating abortion procedures. See *id.*, at 888–894. Explicit legislative findings must be considered, but there were no such findings in H. B. 2. The District Court applied the correct legal standard here, considering the evidence in the record—including expert evidence—and then weighing the asserted benefits against the burdens. Pp. 19–21.

(b) The record contains adequate legal and factual support for the District Court’s conclusion that the admitting-privileges requirement imposes an “undue burden” on a woman’s right to choose. The requirement’s purpose is to help ensure that women have easy access to a hospital should complications arise during an abortion procedure, but the District Court, relying on evidence showing extremely low rates of serious complications before H. B. 2’s passage, found no significant health-related problem for the new law to cure. The State’s record evidence, in contrast, does not show how the new law advanced the State’s legitimate interest in protecting women’s health when compared to the prior law, which required providers to have a “working arrangement” with doctors who had admitting privileges. At the same time, the record evidence indicates that the requirement places a “substantial obstacle” in a woman’s path to abortion. The dramatic drop in the number of clinics means fewer doctors, longer waiting times, and increased crowding. It also means a significant increase in the distance women of reproductive age live from an abortion clinic. Increased driving distances do not always constitute an “undue burden,” but they are an additional burden, which, when taken together with others caused by the closings, and when viewed in light of the virtual absence of any health benefit, help support the District Court’s “undue burden” conclusion. Pp. 21–28.

(c) The surgical-center requirement also provides few, if any, health benefits for women, poses a substantial obstacle to women seeking abortions, and constitutes an “undue burden” on their constitutional right to do so. Before this requirement was enacted, Texas law required abortion facilities to meet a host of health and safety requirements that were policed by inspections and enforced through administrative, civil, and criminal penalties. Record evidence shows that the new provision imposes a number of additional requirements that are generally unnecessary in the abortion clinic context; that it

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provides no benefit when complications arise in the context of a medical abortion, which would generally occur after a patient has left the facility; that abortions taking place in abortion facilities are safer than common procedures that occur in outside clinics not subject to Texas' surgical-center requirements; and that Texas has waived no part of the requirement for any abortion clinics as it has done for nearly two-thirds of other covered facilities. This evidence, along with the absence of any contrary evidence, supports the District Court's conclusions, including its ultimate legal conclusion that requirement is not necessary. At the same time, the record provides adequate evidentiary support for the District Court's conclusion that the requirement places a substantial obstacle in the path of women seeking an abortion. The court found that it "strained credulity" to think that the seven or eight abortion facilities would be able to meet the demand. The Fifth Circuit discounted expert witness Dr. Grossman's testimony that the surgical-center requirement would cause the number of abortions performed by each remaining clinic to increase by a factor of about 5. But an expert may testify in the "form of an opinion" as long as that opinion rests upon "sufficient facts or data" and "reliable principles and methods." Fed. Rule Evid. 702. Here, Dr. Grossman's opinion rested upon his participation, together with other university researchers, in research tracking the number of facilities providing abortion services, using information from, among other things, the state health services department and other public sources. The District Court acted within its legal authority in finding his testimony admissible. Common sense also suggests that a physical facility that satisfies a certain physical demand will generally be unable to meet five times that demand without expanding physically or otherwise incurring significant costs. And Texas presented no evidence at trial suggesting that expansion was possible. Finally, the District Court's finding that a currently licensed abortion facility would have to incur considerable costs to meet the surgical-center requirements supports the conclusion that more surgical centers will not soon fill the gap left by closed facilities. Pp. 28–36.

(d) Texas' three additional arguments are unpersuasive. Pp. 36–39.

790 F. 3d 563 and 598, reversed and remanded.

BREYER, J., delivered the opinion of the Court, in which KENNEDY, GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. GINSBURG, J., filed a concurring opinion. THOMAS, J., filed a dissenting opinion. ALITO, J., filed a dissenting opinion, in which ROBERTS, C. J., and THOMAS, J., joined.

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