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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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JUNE MEDICAL SERVICES L. L. C. ET AL. *v.* RUSSO, INTERIM SECRETARY, LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 18–1323. Argued March 4, 2020—Decided June 29, 2020*

Louisiana's Act 620, which is almost word-for-word identical to the Texas "admitting privileges" law at issue in *Whole Woman's Health* v. *Hellerstedt*, 579 U. S. ___, requires any doctor who performs abortions to hold "active admitting privileges at a hospital . . . located not further than thirty miles from the location at which the abortion is performed or induced," and defines "active admitting privileges" as being "a member in good standing" of the hospital's "medical staff . . . with the ability to admit a patient and to provide diagnostic and surgical services to such patient."

In these consolidated cases, five abortion clinics and four abortion providers challenged Act 620 before it was to take effect, alleging that it was unconstitutional because (among other things) it imposed an undue burden on the right of their patients to obtain an abortion. (The plaintiff providers and two additional doctors are referred to as Does 1 through 6.) The plaintiffs asked for a temporary restraining order (TRO), followed by a preliminary injunction to prevent the law from taking effect. The defendant (State) opposed the TRO request but also urged the court not to delay ruling on the preliminary injunction motion, asserting that there was no doubt about the physicians' standing. Rather than staying the Act's effective date, the District Court provisionally forbade the State to enforce the Act's penalties, while directing

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*Together with No. 18–1460, *Russo, Interim Secretary, Louisiana Department of Health and Hospitals* v. *June Medical Services L. L. C. et al.*, also on certiorari to the same court.

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the plaintiff doctors to continue to seek privileges and to keep the court apprised of their progress. Several months later, after a 6-day bench trial, the District Court declared Act 620 unconstitutional on its face and preliminarily enjoined its enforcement. On remand in light of *Whole Woman's Health,* the District Court ruled favorably on the plaintiffs' request for a permanent injunction on the basis of the record previously developed, finding, among other things, that the law offers no significant health benefit; that conditions on admitting privileges common to hospitals throughout the State have made and will continue to make it impossible for abortion providers to obtain conforming privileges for reasons that have nothing to do with the State's asserted interests in promoting women's health and safety; and that this inability places a substantial obstacle in the path of women seeking an abortion. The court concluded that the law imposes an undue burden and is thus unconstitutional. The Fifth Circuit reversed, agreeing with the District Court's interpretation of the standards that apply to abortion regulations, but disagreeing with nearly every one of the District Court's factual findings.

Held: The judgment is reversed.

905 F. 3d 787, reversed.

JUSTICE BREYER, joined by JUSTICE GINSBURG, JUSTICE SOTOMAYOR, and JUSTICE KAGAN, concluded:

1. The State's unmistakable concession of standing as part of its effort to obtain a quick decision from the District Court on the merits of the plaintiffs' undue-burden claims and a long line of well-established precedents foreclose its belated challenge to the plaintiffs' standing in this Court. Pp. 11–16.

2. Given the District Court's factual findings and precedents, particularly *Whole Woman's Health,* Act 620 violates the Constitution. Pp. 16–40.

(a) Under the applicable constitutional standards set forth in the Court's earlier abortion-related cases, particularly *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, and *Whole Woman's Health,* " '[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' " and are therefore "constitutionally invalid," *Whole Woman's Health,* 579 U. S., at ___. This standard requires courts independently to review the legislative findings upon which an abortion-related statute rests and to weigh the law's "asserted benefits against the burdens" it imposes on abortion access. *Id.*, at ___. The District Court here, like the trial court in *Whole Woman's Health*, faithfully applied these standards. The

Fifth Circuit disagreed with the District Court, not so much in respect to the legal standards, but in respect to the factual findings on which the District Court relied in assessing both the burdens that Act 620 imposes and the health-related benefits it might bring.

Under well-established legal standards, a district court's findings of fact "must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility." Fed. Rule. Civ. Proc. 52(a)(6). When the district court is "sitting without a jury," the appellate court "is not to decide factual issues *de novo,*" *Anderson* v. *Bessemer City*, 470 U. S. 564, 573. Provided "the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently." *Id.,* at 573–574. Viewed in light of this standard, the testimony and other evidence contained in the extensive record developed over the 6-day trial support the District Court's conclusion on Act 620's constitutionality. Pp. 16–19.

(b) Taken together, the District Court's findings and the evidence underlying them are sufficient to support its conclusion that enforcing the admitting-privileges requirement would drastically reduce the number and geographic distribution of abortion providers, making it impossible for many women to obtain a safe, legal abortion in the State and imposing substantial obstacles on those who could. Pp. 19–35.

(1) The evidence supporting the court's findings in respect to Act 620's impact on abortion providers is stronger and more detailed than that in *Whole Woman's Health.* The District Court supervised Does 1, 2, 5, and 6 for more than 18 months as they tried, and largely failed, to obtain conforming privileges from 13 relevant hospitals; it relied on a combination of direct evidence that some of the doctors' applications were denied for reasons having nothing to do with their ability to perform abortions safely, and circumstantial evidence—including hospital bylaws with requirements like those considered in *Whole Woman's Health* and evidence that showed the role that opposition to abortion plays in some hospitals' decisions—that explained why other applications were denied despite the doctors' good-faith efforts. Just as in *Whole Woman's Health*, that evidence supported the District Court's factual finding that Louisiana's admitting-privileges requirement serves no "relevant credentialing function." 579 U. S., at ___. The Fifth Circuit's conclusion that Does 2, 5, and 6 acted in bad faith cannot be squared with the clear-error standard of review that applies to the District Court's contrary findings. Pp. 19–31.

(2) The District Court also drew from the record evidence sev-

eral conclusions in respect to the burden that Act 620 is likely to impose upon women's ability to access an abortion in Louisiana. It found that enforcing that requirement would prevent Does 1, 2, and 6 from providing abortions altogether. Doe 3 gave uncontradicted, in-court testimony that he would stop performing abortions if he was the last provider in northern Louisiana, so the departure of Does 1 and 2 would also eliminate Doe 3. And Doe 5's inability to obtain privileges in the Baton Rouge area would leave Louisiana with just one clinic with one provider to serve the 10,000 women annually who seek abortions in the State. Those women not altogether prevented from obtaining an abortion would face "longer waiting times, and increased crowding." *Whole Woman's Health*, 579 U. S., at ___. Delays in obtaining an abortion might increase the risk that a woman will experience complications from the procedure and may make it impossible for her to choose a non-invasive medication abortion. Both expert and lay witnesses testified that the burdens of increased travel to distant clinics would fall disproportionately on poor women, who are least able to absorb them. Pp. 31–35.

(c) An examination of the record also shows that the District Court's findings regarding the law's asserted benefits are not "clearly erroneous." The court found that the admitting-privileges requirement serves no "relevant credentialing function." 250 F. Supp. 3d 27, 87. Hospitals can, and do, deny admitting privileges for reasons unrelated to a doctor's ability safely to perform abortions, focusing primarily upon a doctor's ability to perform the inpatient, hospital-based procedures for which the doctor seeks privileges—not outpatient abortions. And nothing in the record indicates that the vetting of applicants for privileges adds significantly to the vetting already provided by the State Board of Medical Examiners. The court's finding that the admitting-privileges requirement "does not conform to prevailing medical standards and will not improve the safety of abortion in Louisiana," *ibid.,* is supported by expert and lay trial testimony. And, as in *Whole Woman's Health*, the State introduced no evidence "showing that patients have better outcomes when their physicians have admitting privileges" or "of any instance in which an admitting privileges requirement would have helped even one woman obtain better treatment," 250 F. Supp. 3d*.,* at 64. Pp. 35–38.

(d) In light of the record, the District Court's significant factual findings—both as to burdens and as to benefits—have ample evidentiary support and are not "clearly erroneous." Thus, the court's related factual and legal determinations and its ultimate conclusion that Act 620 is unconstitutional are proper. P. 38.

THE CHIEF JUSTICE agreed that abortion providers in this case have

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standing to assert the constitutional rights of their patients and concluded that because Louisiana's Act 620 imposes a burden on access to abortion just as severe as that imposed by the nearly identical Texas law invalidated four years ago in *Whole Woman's Health* v. *Hellerstedt*, 579 U. S. ___, it cannot stand under principles of *stare decisis*. Pp. 1–16.

BREYER, J., announced the judgment of the Court and delivered an opinion, in which GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. ROBERTS, C. J., filed an opinion concurring in the judgment. THOMAS, J., filed a dissenting opinion. ALITO, J., filed a dissenting opinion, in which GORSUCH, J., joined, in which THOMAS, J., joined except as to Parts III–C and IV–F, and in which KAVANAUGH, J., joined as to Parts I, II, and III. GORSUCH, J., and KAVANAUGH, J., filed dissenting opinions.

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