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**TEXAS TIGHTENS ABORTION RESTRICTIONS:
ABBOTT, PHYSICIAN ADMITTANCE REQUIREMENTS, AND
WHAT IT REALLY MEANS FOR TEXAS WOMEN**

Rebecca Waddell

*Planned Parenthood of Greater Texas Surgical Health Services v.
Abbott*,
748 F.3d 583 (5th Cir. 2014)

I. INTRODUCTION

Since the United States Supreme Court’s landmark decision of *Roe v. Wade*¹ in 1973, the issue of abortion and women’s rights has been at the forefront of cultural, political, and judicial debates. And, because few issues incite the same level of passion and emotion, the debate (and the litigation) never seems to end. Beginning with *Planned Parenthood of Southeastern Pennsylvania*,² and later *Gonzales v. Carhart*,³ the Supreme Court strived to articulate tests for states implementing restrictions on women’s access to abortion services. Yet, as American citizens further recede to opposite ends of the political spectrum, this hot-button issue is increasingly present in the political arena, and thus consistently readdressed by state legislatures. Unsurprisingly, the effect of this polarization is continually hashed out in courts, and the case of *Planned Parenthood of Greater Texas Surgical Health Services v. Abbott*⁴ is no exception.

Brought before the Fifth Circuit on appeal from the Western District of Texas, *Abbott* addresses the constitutionality of recent provisions passed by the Texas Legislature that restrict access to

¹ 410 U.S. 113 (1973). In *Roe*, the Court relied upon the Due Process Clause to establish that personal liberty includes a woman’s right to end a pregnancy via abortion. *Id.* at 153.

² *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992). In *Casey*, the Court reinforced a woman’s right to an abortion, but only before the fetus reaches viability. *Id.* at 870. The Court further defined “viability” as the point after which the fetus becomes able to survive outside the womb. *Id.* Secondly, the Court restricted states implementing new abortion legislation from imposing any “undue burden”—substantial strain—on women attempting to acquire an abortion. *Id.* at 878.

³ *Gonzales v. Carhart*, 550 U.S. 124, 158 (2007) (holding that abortion restrictions imposed by states must have a “rational basis”).

⁴ *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott (Abbott II)*, 748 F.3d 583 (5th Cir. 2014).

abortion services within the state.⁵ Two provisions—the first mandating hospital admittance privileges for physicians performing abortions, and the second enforcing a strict medication protocol—form the basis on this litigation.⁶ Though still ongoing, the latest opinion in the *Planned Parenthood of Greater Texas Surgical Health Services v. Abbott* line of cases, issued by the Fifth Circuit in March 2014, reversed the district court’s judgment enjoining the implementation of the new laws, and upheld the provisions as constitutional.⁷

II. FACTUAL BACKGROUND

In July of 2013, the Texas Legislature passed House Bill No. 2, to later be codified in the Texas Health & Safety Code Annotated,⁸ which, in part, amended regulations regarding abortion procedures.⁹ Two provisions of the bill, which were to take effect on October 29, 2013, were of particular interest to practicing physicians.¹⁰ The first provision at issue requires physicians performing abortions to have admittance privileges at a hospital within thirty miles of where the procedure takes place.¹¹ The second limits the administration of medication to induce an abortion to the protocol required by the United States Food and Drug Administration (FDA), with a few marked exceptions.¹²

Because of the effect the bill would have on clinics and patients across the state, Planned Parenthood of Greater Texas Surgical Health Services, joined by others (collectively, Planned Parenthood), filed suit challenging the constitutionality of the law.¹³ Planned

⁵ *Id.* at 587.

⁶ *Id.*

⁷ *Id.* at 605.

⁸ *Id.* at 587 n.1.

⁹ *Id.* at 587.

¹⁰ *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott (Abbott I)*, 734 F.3d 406, 409 (5th Cir. 2013).

¹¹ *See* TEX. HEALTH & SAFETY CODE § 171.0031(a)(1); *Abbott I*, 734 F.3d at 409. Further, subpart b of the section “criminalizes a physician’s failure to comply.” *Abbott II*, 748 F.3d at 587 n.2.

¹² *See* TEX. HEALTH & SAFETY CODE § 171.063(a); *Abbott I*, 734 F.3d at 416. Prior to the amendment, most physicians administering the medication in Texas had relaxed the standard of the FDA protocol to the “off-label protocol,” which reduced the number of required visits to receive medication. *Abbott I*, 734 F.3d at 416. In *Abbott II*, the court emphasized the safety reasons behind enforcing the FDA protocol, over the “off-label protocol,” focusing on the ability of the attending physician to monitor the health of the woman after receiving the medication. *Id.* at 416-17.

¹³ *Abbott I*, 734 F.3d at 409.

Parenthood's claim called on the Due Process Clause of the Constitution, which guarantees patients' rights to liberty and property.¹⁴

After a three-day bench trial, the district court judge found the first provision to be unconstitutional, and ordered a permanent injunction to stop enforcement of the hospital admittance requirement.¹⁵ The second provision, regarding the administration of medication, was found to be constitutional, except in instances when, in the physician's opinion, a violation of the protocol is medically necessary for the health of the mother.¹⁶ For "health of the mother" cases, the district court partially enjoined the second provision.¹⁷ The State immediately appealed, and filed a motion to stay the injunction.¹⁸

Because of the expedited nature of case, an emergency motion to stay the injunction was heard by the Fifth Circuit within forty-eight hours.¹⁹ The decision to grant the stay hinged predominantly on whether the State "made a strong showing that he is likely to succeed on the merits."²⁰ The State argued, and the court was persuaded, that the provision was intended to reduce problems that occur from physician abandonment—dissolution of the doctor-patient relationship after the procedure—and the medical complications that arise.²¹ According to the State, the regulation is intended to promote continued medical care, and foster relations between physicians and their female patients.²²

Finding that the State "made a strong showing of likelihood of success on the merits" for the admitting privileges requirement, and

¹⁴ *Id.* at 409-10; *see also* U.S. CONST. amend. V ("No person shall . . . be deprived of life, liberty, or property, without due process of law.").

¹⁵ *Abbott I*, 734 F.3d at 410. At the bench trial, because of the expedited process, Planned Parenthood submitted few witnesses and both sides relied primarily upon affidavits. *Abbott II*, 748 F.3d at 588.

¹⁶ *Abbott I*, 734 F.3d at 410.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Abbott II*, 748 F.3d at 588.

²⁰ *Abbott I*, 734 F.3d at 410.

²¹ *Abbott I*, 734 F.3d at 411. According to the Fifth Circuit, the lower court, which claimed the requirement had no rational basis, overlooked the State's interest in regulating the process to protect women's health. *Id.*

²² *Id.* Because the lower court blatantly rejected the legislature's requirement, the Fifth Circuit goes on to suggest the conclusion "is but one step removed from repudiating the longstanding recognition from the Supreme Court that a State may constitutionally require that only a physician may perform an abortion." *Id.* Moreover, the court asserts that the implementation of the regulations did not constitute an "undue burden," as the lower court suggested. *Id.* at 413.

that it demonstrated likely success as to part of the district court's hand-crafted "health of the mother" exception to the medication abortion regulation,²³ the court granted the stay pending the outcome of the appeal.²⁴ Further, the court expedited the hearing of the appeal for full consideration on the merits.²⁵

Following the Fifth Circuit's decision to grant the State's motion to stay the judgment, Planned Parenthood immediately appealed to the United States Supreme Court.²⁶ The Court, however, in a five to four decision, refused to vacate the stay.²⁷ In a concurrence penned by Justice Scalia, the Supreme Court held that it could not vacate the Fifth Circuit's stay "unless that court clearly and 'demonstrably' erred in its application of 'accepted standards.'"²⁸ The dissent, however, focused on six factors, including maintaining the *status quo* and expected levels of access for women in Texas, and stressed the need to vacate the stay.²⁹

The stay was upheld, and the expedited briefing and oral arguments were heard by the Fifth Circuit in January 2014.³⁰ In March, the Fifth Circuit addressed the merits of the State's appeal in *Abbott II*.³¹

III. ANALYSIS

On full hearing of the merits, the State argued that the district court erred on multiple points, including: "[1] facially invalidating the admitting-privileges regulation; [and] [2] creating a broad and vague health exception to the medication abortion regulations"³² The Fifth Circuit addressed each issue in turn.³³

²³ *Id.* at 416.

²⁴ *Abbott I*, 734 F.3d at 419.

²⁵ *Abbott I*, 734 F.3d at 419.

²⁶ *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 134 S. Ct. 506 (2013). While briefing the Supreme Court, however, Planned Parenthood focused solely on the first provision and the ramifications of the stay on physicians and patients in acquiring an abortion. See Brief for Applicant, *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 134 S. Ct. 506 (2013) (No. 13A452), 2013 U.S. S. Ct. Briefs LEXIS 4599, at *1.

²⁷ *Abbott*, 134 S. Ct. at 506 (Scalia, J., concurring).

²⁸ *Id.* (quoting *W. Airlines, Inc. v. Teamsters*, 480 U.S. 1301, 1305 (1987)).

²⁹ *Abbott*, 134 S. Ct. at 508-9 (Breyer, J., dissenting).

³⁰ *Abbott I*, 734 F.3d at 419.

³¹ *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott (Abbott II)*, 748 F.3d 583 (5th Cir. 2014).

³² *Id.* at 588 (internal quotation marks omitted).

³³ *Id.*

A. Admittance Privileges

First, when considering these issues, the Fifth Circuit determined the governing test here stems from *Casey*, and whether the restriction qualifies as an “undue burden,” meaning it “has the purpose or effect of creating a ‘substantial obstacle’ to a woman’s choice.”³⁴ Thus, the question becomes “whether Planned Parenthood has met its burden to prove that the admitting privileges regulation imposes an undue burden on a woman’s ability to choose an abortion.”³⁵

To bolster its constitutional claim that the hospital admittance requirement was an undue burden, Planned Parenthood relied on expert testimony claiming the risk to a mother in an abortion procedure is minimal.³⁶ Further, its experts stated that in the rare instance that further medical attention is needed for the mother, ER physicians are properly trained to care for a patient experiencing complications.³⁷ Essentially, the need for the restriction to protect the mother’s health is slight.³⁸

According to Planned Parenthood, the burden it creates, however, is immense.³⁹ Because many hospitals maintain strict policies against administering abortions, few are willing to grant admittance privileges to physicians that perform the procedure.⁴⁰ Furthermore, based on the lack of credentialing among physicians currently administering the procedure and the unlikelihood local hospitals will extend privileges to them, an estimated one-third of all abortion clinics in the state will close.⁴¹ According to Planned Parenthood experts, that would result in roughly 22,000 women in

³⁴ *Id.* at 590; see *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 870 (1992).

³⁵ *Abbott II*, 748 F.3d at 590.

³⁶ *Id.* at 591. According to Planned Parenthood’s expert witness, Dr. Paul Fine, a board-certified OB/GYN, “only 2.5 percent of women who have a first-trimester surgical abortion undergo minor complications, while fewer than 0.3 percent experience a complication that requires hospitalization.” *Id.*

³⁷ *Id.* Another expert witness, Dr. Jennifer Carnell, testified that “ER physicians have experience in treating abortion-related complications, which are very similar to the symptoms of miscarriage, a condition commonly seen in ERs.” *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 591-92. Indeed, a head of one Texas clinic testified that in an attempt to recruit five new physicians to the clinic, three were “unable to join [the clinic’s] staff because their primary practice or hospitals barred them from working as abortion care providers.” *Id.*

⁴¹ *Id.* at 591.

Texas losing the ability to procure an abortion.⁴² In short, it is an incredible burden.

The State, however, countered Planned Parenthood's facts and statistics with the broad notion that the hospital admittance requirement serves a greater State interest because:

(a) it provides a more thorough evaluation mechanism of physician competency which better protects patient safety; (b) it acknowledges and enables the importance of continuity of care; (c) it enhances inter-physician communication and optimizes patient information transfer and complication management; and (d) it supports the ethical duty of care for the operating physician to prevent patient abandonment.⁴³

Focusing on continuity of care and credentialing of physicians, the State, in a typical battle of the experts, refuted all of Planned Parenthood's testimony.⁴⁴ Claiming Planned Parenthood's statistics underestimated risk and overestimated the ability of ER physicians, the State continually emphasized the need for increased safety precautions and tighter regulation on credentialing and relicensing of physicians.⁴⁵

Again persuaded by the State's argument, the Fifth Circuit found that Planned Parenthood's argument establishing an undue burden was "vague and imprecise, fail[ed] to correlate with the evidence, and even if credited, fail[ed] to establish an undue burden according to the Supreme Court's decisions."⁴⁶

First, taking issue with the estimated number of women affected, the court noted that of the counties in the Rio Grande Valley area discussed in the record, the greatest distance of travel to a clinic was 150 miles, and, under *Casey*, that would not qualify as an undue burden.⁴⁷ Second, though some clinics will likely close, there is no

⁴² *Id.* This number was calculated as approximately one-third of the total number (72,470) of women that obtained abortions in Texas in 2011. *Id.* at 591 n.10.

⁴³ *Id.* at 592.

⁴⁴ *Id.* at 592-93. The expert for the State claimed the studies cited by Planned Parenthood were nearly forty years old, and current trends indicated complications occurred in approximately one-third to one-half of all abortions. *Id.* at 593.

However, the expert also claimed most complications went unreported. *Id.*

⁴⁵ *Id.* at 592-93.

⁴⁶ *Id.* at 597.

⁴⁷ *Id.* at 598; see *Planned Parenthood of Se. Pa. v. Casey*, 744 F. Supp. 1323, 1352 (E.D. Pa. 1990) (discussing that in Pennsylvania, most women were required to travel at least one hour, and sometimes more than three hours, to obtain an abortion, and that did not qualify as an undue burden).

empirical evidence that the women in those rural areas would be unable to obtain an abortion from another functioning clinic.⁴⁸ Lastly, the Court found that Planned Parenthood likely overestimated the difficulty of obtaining admittance privileges for physicians.⁴⁹ Indeed, the Court went on to state that “[i]n a number of areas in Texas,” physicians already possess admittance privileges, and further, hospitals may not discriminate against physicians that perform abortions by withholding admittance privileges.⁵⁰

Next, the Fifth Circuit attacked the district court’s opinion for finding in favor of Planned Parenthood in light of the State’s “lack of evidence” to establish a rational basis under *Gonzales*.⁵¹ The court simply noted that the State is not required to supply evidence.⁵² Indeed, the court is required to “presume that the law in question is valid and sustain it so long as the law is rationally related to a legitimate state interest.”⁵³ Furthermore, once a connection, albeit abstract, is made between the law and a state interest, the test is satisfied.⁵⁴ And, because “[m]ost legislation deals ultimately in probabilities,”⁵⁵ later success of the law need not be “proven.”⁵⁶

By that measure, when substantiating the State’s argument, the court noted that the State “explained that the credentialing process entailed in the regulation reduces the risk that abortion patients will be subjected to woefully inadequate treatment.”⁵⁷ In short, there is a rational connection between the regulation (the admittance requirement) and the state’s interest (reducing the risk to the mother). Consequently, the Fifth Circuit held that, when applying the proper rational basis test, “the State acted within its prerogative to regulate the medical profession by heeding these patient-centered concerns and

⁴⁸ *Abbott II*, 748 F.3d at 598-99.

⁴⁹ *Id.* at 598.

⁵⁰ *Id.*; see TEX. OCC. CODE ANN. § 103.002(b) (“A hospital or health care facility may not discriminate against a physician, nurse, staff member or employee because of the person’s willingness to participate in an abortion procedure at another facility.”). Furthermore, physicians may take private action against health care facilities that actively discriminate. TEX. OCC. CODE ANN. § 103.003.

⁵¹ *Abbott II*, 748 F.3d at 593-94.

⁵² *Id.* 594.

⁵³ *Id.* (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985)).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* The court further notes that “[t]he court may not replace legislative predictions or calculations of probabilities with its own” *Id.*; see also *Heller v. Doe*, 509 U.S. 312, 320 (1993) (concluding that rational basis review does not give courts the power to judge the wisdom or logic of legislators).

⁵⁷ *Abbott II*, 748 F.3d at 595.

requiring abortion practitioners to obtain admittance privileges at a nearby hospital.”⁵⁸

Ultimately, the Fifth Circuit held that “the district court’s opinion applied wrong legal standards on the rational basis and purpose tests and clearly erred in finding that ‘24 counties in the Rio Grande Valley would be left with no abortion provider.’”⁵⁹ Further, the court emphasized that the district court “erroneously concluded that [House Bill No. 2] imposed an undue burden in a large fraction of the cases.”⁶⁰ Thus, the court held that the physician admittance requirement satisfied the rational basis review delineated by *Casey* and *Gonzales*, and upheld the provision as constitutional.⁶¹

B. Protocol for Administering Medication

Regarding the regulation of abortion-inducing medication and the stricter FDA protocol, the Fifth Circuit again addressed and discarded the lower court’s opinion.⁶² Prior to the amendment, most physicians administering the medication in Texas had relaxed the standard of the FDA protocol to the “off-label protocol,” which reduced the number of required visits to receive medication.⁶³ Further, the FDA protocol limits the time for administering abortions via medication to forty-nine days after conception, while physicians following the “off-label protocol” often administer the drug up to sixty-three days into the pregnancy.⁶⁴ According to Planned Parenthood’s expert witnesses, this becomes necessary when a woman, due to certain physical features or medical conditions, cannot safely undergo a surgical abortion.⁶⁵

The State, on the other hand, emphasized the safety reasons behind enforcing the FDA protocol, over the “off-label protocol,” focusing on the ability of the attending physician to monitor the health

⁵⁸ *Id.*

⁵⁹ *Id.* at 599-600.

⁶⁰ *Id.* at 600.

⁶¹ *Id.* at 594-95.

⁶² *Id.* at 604-05.

⁶³ *Id.* at 600.

⁶⁴ *Id.* at 601.

⁶⁵ *Id.* at 601. Planned Parenthood’s expert, Dr. Fine, stated that first-trimester surgical abortions can be “extremely difficult, if not impossible” for some women. *Id.* at 602. Women who are “extremely obese, have uterine fibroids distorting normal anatomy, have a uterus that is very flexed, or have certain uterine anomalies, such as a malformed uterus” may be at risk when receiving surgical abortions, and physicians resort to abortion via medication. *Id.*

of the woman after receiving the medication.⁶⁶ The State's witness claimed "drug-induced abortions present more medical complications and adverse events than surgical abortions, with six percent of medication abortions eventually requiring surgery to complete the abortion, often on an emergency basis."⁶⁷

While the lower court did not find the new regulation enforcing FDA protocol as a whole to be unconstitutional, it included an exception for the "health of the mother," and stopped the enforcement of the regulation in those cases by injunction.⁶⁸ The Fifth Circuit, however, remained unconvinced and found that the medication regulation did not "facially require a court-imposed exception for the life and health of the [mother]."⁶⁹ Because the regulation did not entirely ban the abortion practice, as it did in *Gonzales*, and because no consensus was reached over the safety advantages of either method, the court found the "health of the mother" exception to be overly broad and unnecessary.⁷⁰

Ultimately, the Fifth Circuit found for the State on all counts and reversed the lower court's decision.⁷¹ House Bill No. 2 is now in full force, with only one noted exception—physicians that "*timely* applied for admitting privileges under the statute but are awaiting a response from the hospital" receive temporary immunity.⁷²

IV. RAMIFICATIONS

Here, the Fifth Circuit Court of Appeals dissected many compelling arguments in favor of the legislation, and doing so, touched on many contemporary abortion issues. While, at face value, the new provisions appear to decrease access to abortion services, particularly for younger women from rural areas and lower socio-economic positions, the Fifth Circuit makes a rather convincing argument to the contrary. In its first decision, when determining whether to stay the injunction, the court virtually praises the legislation, celebrating the amendment to the abortion laws as a much

⁶⁶ *Id.* at 602.

⁶⁷ *Id.*

⁶⁸ *Abbott I*, 734 F.3d at 416.

⁶⁹ *Abbott II*, 748 F.3d at 604.

⁷⁰ *Id.* at 604-05.

⁷¹ *Id.* at 605.

⁷² *Id.*

needed increase in medical safety.⁷³ The argument goes as far as to claim advocacy in favor of women's health and well-being.⁷⁴

Although Planned Parenthood argues the new laws would mean approximately 22,000 women in Texas would no longer have access to an abortion, the court finds the estimate to be unsubstantiated.⁷⁵ The court insists the regulations would not hinder women's access to the service, but simply increase the safety precautions associated with the procedure. Seemingly, there would be few consequences for the women of Texas, and the largest burden would fall on the physicians, requiring the continual upkeep of licensing.

The court found that Planned Parenthood's estimates were invalid because Planned Parenthood assumed that the women seeking abortions from now-closed clinics would be unable to travel great distances to obtain one elsewhere.⁷⁶ While it is true that some women will commute to the other clinics, there are still a great number of women unable to travel that distance because of limited resources. Furthermore, particularly in rural settings, there is the added burden of traveling hundreds of miles to the closest abortion clinic—is that not the definition of undue burden?

Since *Planned Parenthood of Southeastern Pennsylvania v. Casey* in 1992, where Justice O'Connor first established the concept of undue burden,⁷⁷ courts have continued to struggle with its meaning and application. Termed "notoriously nonspecific,"⁷⁸ the undue burden requirement wreaks havoc with legislators and judges alike, leading to marked inconsistencies in abortion regulations across the country. With lack of clarity as justification, more conservative jurisdictions have pushed against the term, expanding where they see fit to implement additional hindrances before a woman can exercise her freedom of choice.

⁷³ See *Abbott I*, 734 F.3d at 411-13. Indeed, the court suggests that the law in fact benefits women and the medical field as a whole by "ensur[ing] that credentialing of physicians beyond initial licensing and periodic license renewal occurs," and "protecting the health of women who undergo abortion procedures." *Id.* The court finds that it allows the state to install a necessary safeguard to insure patient safety. *Id.*

⁷⁴ See *id.*

⁷⁵ *Abbott II*, 748 F.3d at 598; see also *Abbott I*, 734 F.3d at 414.

⁷⁶ *Abbott II*, 748 F.3d at 597-98.

⁷⁷ *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992).

⁷⁸ Caitlin E. Borgmann, *Roe at 40: The Controversy Continues: Session 2: Abortion Exceptionalism and Undue Burden Preemption*, 71 WASH. & LEE L. REV. 1047, 1049 (2014).

Consequently, the burden these now legitimized regulations place on the women of Texas is only the beginning. The biggest danger stemming from this victory for the State lies in fellow state legislatures taking notice. Although similar regulations have graced the floors of state congressional halls in the past, few received such marked success.⁷⁹ Even among the few states that do possess physician admittance requirements,⁸⁰ the current Texas rules are the most harsh and sweeping physicians have encountered. And now that the Fifth Circuit has upheld their validity, it is only a matter of time until neighboring states follow suit. Furthermore, the significant media attention this bill received in the summer of 2013, when Wendy Davis performed a 21-hour filibuster on the Senate floor, merely solidified the regulations' place in the public and political spotlight.⁸¹ Indeed, this was not a law that passed unnoticed.

Although Planned Parenthood will likely appeal to the Supreme Court, it is unclear whether the Court will affirm the ruling, strike it down as unconstitutional, or even take the case at all. However, it is clear that other states will take notice of the new rules. Whether similar bills will consequently make their way through the houses of various state congresses, however, is yet to be seen.

V. CONCLUSION

Because of the deeply personal, religious, moral and social issues related to a woman's right to choose, the issue of abortion is one that has been hotly debated in the United States for many years. In the wake of numerous conservative backlashes, the subject's ability to spark controversy is omnipresent. Consequently, with ever-tightening

⁷⁹ See, e.g., *Planned Parenthood of Wis., Inc. v. Van Hollen*, 738 F.3d 786 (7th Cir. 2013) (striking down a physician admittance requirement passed in Wisconsin). The Fifth Circuit Court in *Abbott II* acknowledged the failure of the requirement in Wisconsin, but distinguished it by emphasizing the court there ruled on a preliminary injunction, not a permanent injunction, and Wisconsin physicians were given merely days to comply with the regulation, while those in Texas were given 100 days. *Abbott II*, 748 F.3d at 596.

⁸⁰ See, e.g., *Greenville Women's Clinic v. Comm'r, S.C. Dep't of Health & Env't. Control*, 317 F.3d 357 (4th Cir. 2002) (finding admittance privileges for abortion providers to be beneficial to female patients); *Women's Health Ctr. of W. Cnty., Inc. v. Webster*, 871 F.2d 1377, 1381 (8th Cir. 1989) (upholding a Missouri state regulation requiring admittance privileges because it "further[ed] important state health objectives").

⁸¹ See Manny Fernandez, *Filibuster in Texas Senate Tries to Halt Abortion Bill*, N.Y. TIMES (June 25, 2013), <http://www.nytimes.com/2013/06/26/us/politics/senate-democrats-in-texas-try-blocking-abortion-bill-with-filibuster.html>.

regulations imposed at the state level, courts continue to interpret and decipher the laws associated with abortion. As is seen in the case of *Planned Parenthood of Greater Texas Surgical Health Services v. Abbott*, the women of Texas now face greater obstacles in acquiring this fundamental right to choose. With *Abbott*, however, the story may not be over.

