

MORE THAN MILEAGE: THE PRECONDITIONS OF TRAVEL AND THE REAL BURDENS OF H.B. 2*

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During the winter break of my second year in law school, I drove from my childhood home in Fort Worth, Texas to New Orleans, Louisiana to watch oral arguments at the Fifth Circuit in the case *Planned Parenthood v. Abbott*.¹ That case was the first legal challenge to the constitutionality of Texas House Bill 2 (“H.B. 2”),² the omnibus anti-abortion bill enacted by the Texas legislature in 2013. In total, I drove 541 miles door-to-door, spending about eight hours on the road each way. That distance is slightly less than what a woman living in El Paso would have to travel to get an abortion in Texas if H.B. 2 had been fully implemented. Because of the Supreme Court’s decision in *Whole Woman’s Health v. Hellerstedt*,³ the second attempt to strike down the law, that potential outcome will hopefully remain a hypothetical.

Whole Woman’s Health challenged two provisions of H.B. 2,⁴ which is aimed at shuttering clinics that provide abortions, as Texas politicians have more or less admitted.⁵

* This piece is an expansion upon remarks made at the panel presentation Banishing Women: The Law and Politics of Abortion Travel at Columbia Law School on February 20, 2016. It has been amended, in part, to reflect judicial decisions from the October 2015 term that were handed down after the event. Many thanks to event organizers Nicole Tuszynski and Lisa Kelly at the Center for Reproductive Rights, Professor Carol Sanger, and the *Columbia Journal of Gender and Law* for giving me the opportunity to speak and to provide this Article.

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1 *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 748 F.3d 583 (5th Cir. 2014) (rehearing en banc denied).

2 Regulation of abortion procedures, providers, and facilities; providing penalties, ch. 1 §§ 1–12, 2013 TEX. SESS. LAW SERV. 4795-802 (West) (codified at TEX. HEALTH & SAFETY CODE ANN. §§ 171.0031(a)(1), 171.041–048, 171.061–064, and amending 245.010–011; amending TEX. OCC. CODE ANN. § 164.055).

3 *Whole Women’s Health v. Hellerstedt*, 579 U.S. ___ (2016).

4 *Whole Woman’s Health v. Cole*, 790 F.3d 563 (5th Cir. 2015) *cert granted*, 136 S. Ct. 499 (2015), *argued sub nom.* *Whole Woman’s Health v. Hellerstedt*, 579 U.S. ___ (2016).

5 Shortly after Senator Davis’ filibuster, then-Lieutenant Governor David Dewhurst tweeted an image declaring that S.B. 5 (the original version of what would become H.B. 2) would “essentially ban abortion

The first provision under review required abortion providers to have admitting privileges at a hospital within thirty miles of the clinic where they provide services.⁶ The second required abortion clinics to meet the standards of an ambulatory surgical center⁷: outpatient medical facilities equipped for invasive surgeries. Mainstream medical experts unanimously agree that these requirements, and others like them, are not only onerous and expensive, but also arbitrary and unnecessary.⁸ The provisions did nothing to ensure women's health and safety. In fact, data shows that H.B. 2 harms women's well-being.⁹

That harm is largely the result of the law, especially the two provisions in question, forcing clinics to close, thereby making abortion services inaccessible to Texas residents in need of care. In reversing the Fifth Circuit and striking down the admitting privileges and ambulatory surgical center provisions in H.B. 2, the Supreme Court's majority opinion recognized the extensive harm caused by TRAP (Targeted Regulation of Abortion Providers) laws.¹⁰ And, more than recognize the harms, the justices in the majority declared an evaluation of the harm done by such regulations a necessary part of Constitutional analysis. But as bold as Justice Breyer's opinion was in *Whole Woman's Health*, it is only forward-looking, preventing future harm. It cannot and does not undo the damage already inflicted upon the women of Texas, nor does it solve the access problem caused by H.B. 2; there are not enough clinics in Texas.

Even just partial implementation of H.B. 2 caused a significant reduction in the number of abortion clinics in the state. Prior to the law's enactment, Texas had roughly forty-one

statewide," alongside text saying, "We fought to pass SB5, & this is why!" Christy Hoppe, *Lt. Gov. Dewhurst Says in Tweet That Abortion Bill All About Shutting Down Accessibility*, DALLAS MORNING NEWS (June 19, 2013), <http://trailblazersblog.dallasnews.com/2013/06/lt-gov-dewhurst-says-in-tweet-that-abortion-bill-all-about-shutting-down-accessibility.html/> [<https://perma.cc/9FY8-RHYC>].

6 TEX. HEALTH & SAFETY CODE ANN. § 171.0031(a)(1) (2015).

7 *Id.* at § 245.010(a).

8 Brief for Amici Curiae American College of Obstetrics and Gynecologists et al. in Support of Petitioners at 4–5, *Whole Woman's Health v. Cole*, 136 S. Ct. 499 (2015) (No. 15-274).

9 *Id.* at 22–26.

10 *Whole Woman's Health v. Hellerstedt*, 579 U.S. ___ (2016) (“[I]n the face of no threat to women’s health, Texas seeks to force women to travel long distances to get abortions in crammed-to-capacity superfacilities.” The Court acknowledged that due to these regulations, “patients seeking these services are less likely to get the kind of individualized attention, serious conversations, and emotional support that doctors at less taxed facilities may have offered.”).

clinics.¹¹ Approximately nineteen remain—meaning that in just three years, over half the clinics providing abortion closed.¹² Had the law gone into full effect, the number would have been reduced to ten or fewer, with all the remaining clinics clustered in the state’s major metropolitan areas of Fort Worth, Dallas, Houston, Austin, and San Antonio.¹³

Today only one clinic remains in McAllen, Texas.¹⁴ By reversing the lower court’s ruling and declaring these two provisions of H.B. 2 unconstitutional, the Supreme Court’s decision enables the McAllen clinic to operate at full capacity rather than the reduced schedule forced upon it by the Fifth Circuit’s earlier decision.¹⁵ But it will take time—months or, more likely, years—to return capacity in the Rio Grande Valley and elsewhere in the state to pre-2013 levels. Thus, the weight of the burdens imposed by H.B. 2 continues to bear down on Texas residents and to fall most heavily upon those most immediately and abundantly hurt by the law: Latina immigrants and their families, especially those living in rural communities. These harms, and the clinic shortage causing them, are the legacies of H.B. 2 and of a toothless undue burden standard that guided abortion jurisprudence for far too long.

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During oral arguments in *Planned Parenthood v. Abbott*, Judge Edith Jones queried how difficult a drive between McAllen and Corpus Christi could be for a woman. The roads in Texas, she explained, are wide and flat. The speed limit is between seventy-five and eighty miles an hour. Such a drive, she imagined, could not take that long.¹⁶ In making

11 Molly Redden, *The War on Women is Over and Women Lost: While You Weren’t Watching Conservatives Fundamentally Rewrote Abortion Laws*, MOTHER JONES (Sept./Oct. 2015), <http://www.motherjones.com/politics/2015/07/planned-parenthood-abortion-the-war-is-over> [https://perma.cc/EAZ9-9HH5].

12 Kelli Garcia, *Chipping Away at Roe in Texas and Beyond*, NAT’L WOMEN’S L. CTR. (Jan. 19, 2016), <https://nwlc.org/chipping-away-at-roe-in-texas-and-beyond> [https://perma.cc/GH7T-PRNT]. See also Redden, *supra* note 11.

13 Brief for Petitioners at 23–24, *Whole Woman’s Health v. Cole*, 136 S. Ct. 499 (2015) (No. 15-274).

14 See *id.*

15 *Whole Woman’s Health v. Cole*, 790 F.3d 563, 596 (5th Cir. 2015) *cert granted*, 136 S. Ct. 499 (2015), *argued sub nom.* *Whole Woman’s Health v. Hellerstedt*, 579 U.S. __ (2016).

16 Oral Argument at 25:11, *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 748 F.3d 583 (5th Cir. 2014) (No. 13-51008), <http://www.ca5.uscourts.gov/oral-argument-information/oral-argument-recordings> (search “13-51008” in “Docket Number” field). This line of thinking was also reflected in the Fifth Circuit’s decision in the case. *Planned Parenthood*, 748 F.3d at 597–98.

this statement, Judge Jones of course failed to consider the legal and material preconditions necessary for such travel. She forgot, it seems, that women seeking abortions live complex lives, constrained by a number of obligations as well as by state and federal mechanisms of social control. Judge Jones' questioning manifests one of the major difficulties advocates and activists faced in battling anti-abortion legislation in the years before the landmark *Whole Woman's Health* decision: when applying the undue burden standard, many judges examined regulations in a vacuum,¹⁷ divorced from the lived realities of the women who experience them and their attendant harms.¹⁸

A reproductive justice frame attempts to remedy this blind spot by placing the question of abortion access within a holistic analysis of people's lives that examines the political and historic circumstances in which those lives are situated.¹⁹ Reproductive justice advocates understand reproductive healthcare as a human right²⁰ and, accordingly, look to international human rights law for guidance in interpreting domestic policies surrounding abortion access. In the amicus brief we submitted to the Supreme Court in *Whole Woman's Health*, National Latina Institute for Reproductive Health ("NLIRH") deployed such a frame. We argued that the limitations imposed by H.B. 2 effectively prevent women from actualizing their rights to an abortion and that the impossibility of effectuating a right

17 Linda J. Wharton, et al., *Preserving the Core of Roe: Reflections on Planned Parenthood v. Casey*, 18 *YALE J.L. & FEMINISM* 317, 363 (2006).

18 It is worth noting, as discussed by my fellow panelist David Brown, that this is not an analysis undertaken by all judges. Judge Richard Posner, for example, has analyzed regulations on abortion through a holistic lens that considers both the legislation's purpose and its cumulative effect on access to services, especially for women without easy access to transportation. *Planned Parenthood of Wis., Inc. v. Schimel*, 806 F.3d 908, 919, 921 (7th Cir. 2015) ("It's also true, though according to the cases just quoted irrelevant, that a 90-mile trip is no big deal for persons who own a car or can afford an Amtrak or Greyhound ticket. But more than 50 percent of Wisconsin women seeking abortions have incomes below the federal poverty line and many of them live in Milwaukee (and some north or west of that city and so even farther away from Chicago). For them a round trip to Chicago, and finding a place to stay overnight in Chicago should they not feel up to an immediate return to Wisconsin after the abortion, may be prohibitively expensive.") ("But a statute that curtails the constitutional right to an abortion, such as the Wisconsin and Texas statutes, cannot survive challenge without evidence that the curtailment is justifiable by reference to the benefits conferred by the statute.").

19 See Sarah London, *Reproductive Justice: Developing A Lawyering Model*, 13 *BERKELEY J. AFR.-AM. L. & POL'Y* 71, 72 (2011) ("Reproductive justice activists recognize that 'reproductive choice' does not occur in a vacuum, but in the context of all other facets of a woman's life, including barriers that stem from poverty, racism, immigration status, sexual orientation and disability.").

20 See generally Jael Silliman et al., *UNDIVIDED RIGHTS: WOMEN OF COLOR ORGANIZE FOR REPRODUCTIVE JUSTICE* (2004) (describing reproductive rights as human rights).

impermissibly renders the right illusory.²¹ To bridge the gap between legal theory and reality, we provided the Court with a number of stories we collected in the summer and fall of 2015 that illuminate the way these burdens are experienced by Texan Latinas seeking abortion.²²

One of those stories is Ana's.²³

Ana is a twenty-one-year-old Latina woman living in Austin, Texas. She was six weeks pregnant when she decided to seek an abortion.

Ana first called her local clinic in Austin to make an appointment for her procedure, but found that the wait time would be three weeks—a common occurrence in Texas due to capacity issues created by the clinic shortage. Three weeks would push Ana outside the window for a medication abortion, which is the procedure she wanted to have. Three additional weeks would also mean an increase in cost, making an abortion financially out of reach for Ana. Instead of waiting, she called the clinic in McAllen and was able to secure an appointment just a few days later.

A little past midnight the night before her first appointment, after finishing her shift at the restaurant where she works, Ana and her boyfriend drove 312 miles from Austin to McAllen overnight. They arrived at the hotel where they were staying just before her visit with the physician. The next day, she had a second appointment and completed the procedure.

Though medication abortion requires only two pills, Texas requires women to take them at the clinic, in the doctor's presence, and to come for a follow-up appointment after the procedure. This would have required Ana to stay overnight in McAllen an extra day. Because of her work schedule and the financial burden of paying for accommodations or making another 624-mile roundtrip journey, a medical abortion was out of the question.

21 Brief of National Latina Institute for Reproductive Health, et al. as Amici Curiae Supporting Petitioners, *Whole Woman's Health*, 136 S. Ct. 499 (2015) (No. 15-274) [hereinafter NLIRH Brief].

22 *Id.* at 16–17.

23 Interview by Ana Rodriguez DeFrates, Texas Latina Advocacy Network Policy & Advocacy Director, National Latina Institute for Reproductive Health, with Ana, anonymous Texas resident (Aug. 2015). To protect confidentiality, our amicus brief as well as my remarks and this piece rely on a pseudonym. Interview notes are on file with NLIRH.

She had a surgical abortion. Thus, ultimately, the State made a de facto decision about Ana's care options.²⁴

After the procedure was completed, Ana and her boyfriend got in the car and drove 312 miles back to Austin. She went to work the next morning.

* * *

The district court ruling in *Whole Woman's Health*, which the Fifth Circuit later reversed, found that, individually, both the ambulatory surgical center provision and the admitting privileges provision of H.B. 2 place undue burdens on a woman's constitutional right to a previability abortion. The court additionally found that the provisions taken together impose an undue burden on this right. Articulating its reasoning, the court wrote that the provisions create a de facto ban on abortion:

[H]ere, the record conclusively establishes that increased travel distances *combine* with practical concerns unique to every woman. These practical concerns include lack of availability of childcare, unreliability of transportation, unavailability of appointments at abortion facilities, unavailability of time off from work, immigration status and inability to pass border checkpoints, poverty level, the time and expense involved in traveling long distances, and other, inarticulable psychological obstacles.²⁵

Ana's story illustrates many of the practical concerns Judge Yeakel highlighted. Her story is, in many ways, typical. But it's important to note, too, that Ana's circumstances were some of the least complex of those described to us.

For instance, unlike sixty-one percent of women who have abortions in the United States,²⁶ Ana does not have any other children. Many of the women we spoke to were

24 Interestingly, during oral arguments in *Whole Woman's Health*, Justice Kennedy ultimately highlighted the prevalence of similar outcomes, asking whether an underlying "impetus" or "effect" of H.B. 2 was to "increase surgical abortions as distinct from medical abortions . . ." He then noted that "medical abortions are up nationwide but down significantly in Texas." Transcript of Oral Argument at 43, *Whole Women's Health v. Hellerstedt*, 579 U.S. __ (2016) (No. 15-274).

25 *Whole Woman's Health v. Lakey*, 46 F. Supp. 3d 673, 683 (W.D. Tex. 2014), *aff'd in part, vacated in part, rev'd in part sub nom. Whole Woman's Health v. Cole*, 790 F.3d 563 (5th Cir. 2015), *modified*, 790 F.3d 598 (5th Cir. 2015), *cert. granted*, 136 S. Ct. 499 (2015).

26 GUTTMACHER INST., FACT SHEET: ABORTION IN THE UNITED STATES (2010), <https://www.guttmacher.org/>

already parents. They talked about having to schedule appointments while their children were in school, and of having to re-arrange their own school and work schedules, because parenting obligations often meant they could not afford to take additional vacation days.

Second, Ana had access to a means of transportation. She and her partner were able to drive a car to McAllen, but if she had not had either a car, license, or someone else to drive her—as is true for many Latinas, especially in more rural areas like the Rio Grande Valley²⁷—she would have had to rely on public transportation. While most large cities in Texas do have some public transit systems, these systems are often extremely limited and do not go between cities or across state and national borders. Moreover, bus travel typically runs on limited schedules,²⁸ making reliance on private transportation similarly difficult. Thus, “[t]he farther a woman needs to travel, the higher the cost and lower the availability of transportation.”²⁹

Third, Ana’s travel was possible, in part, because she is a United States citizen. The full scope of the burdens created by H.B. 2 cannot be understood outside of the context of immigration enforcement and an evaluation of how these regulating forces work in concert with one another. Immigrant Latina women, particularly those who are undocumented, face significant impediments to travel, often making access to care impossible. Within the nation’s 100-mile border zone,³⁰ which comprises a significant portion of the drive Ana made from Austin to McAllen, permanent and tactical checkpoints³¹ are ubiquitous and

sites/default/files/report_pdf/us-abortion-patients.pdf [https://perma.cc/K6MF-LYX4].

27 Joint Appendix Vol. II at 364–65, *Whole Women’s Health v. Hellerstedt*, 579 U.S. ___ (2016); see also *CTR. FOR REPRODUCTIVE RIGHTS, NUESTRA VOZ, NUESTRA SALUD, NUESTRO TEXAS: THE FIGHT FOR WOMEN’S REPRODUCTIVE HEALTH IN THE RIO GRANDE VALLEY* 31 (2013), <http://www.nuestrotexas.org/pdf/NT-spread.pdf> [https://perma.cc/JK3V-S86J].

28 NLIRH Brief, *supra* note 21, at 8.

29 *Id.* at 9.

30 *Customs and Border Protection’s (CBP’s) 100-Mile Rule*, ACLU, <https://www.aclu.org/aclu-factsheet-customs-and-border-protections-100-mile-zone?redirect=immigrants-rights/aclu-fact-sheet-customs-and-border-protections-100-mile-zone> [https://perma.cc/98G7-JGCY] (last visited July 13, 2016).

31 “Tactical checkpoints” refer to border checkpoints that move, frequently along highways, as compared to permanent checkpoints which are fixtures within the border zone. See U.S. GOV’T ACCOUNTABILITY OFFICE, *BORDER PATROL: CHECKPOINTS CONTRIBUTE TO BORDER PATROL’S MISSION, BUT MORE CONSISTENT DATA COLLECTION AND PERFORMANCE MEASUREMENT COULD IMPROVE EFFECTIVENESS* (2009), <http://gao.gov/assets/300/294548.pdf> [https://perma.cc/ZHF5-TCV8]. See also Madeline M. Gomez, *Intersections at the Border: Immigration Enforcement, Reproductive Oppression and the Policing of Latina Bodies in the Rio*

pose the risk of detention or deportation for immigrant women and their families who may encounter them.³² The presence of these checkpoints, and the threat they pose, prevents many from traveling outside of their communities, limiting access not only to abortion care but a wide range of other healthcare needs.³³

These factors—time, money, accommodations, school, work, childcare, travel, and immigration enforcement—and others create an intricate series of obstacles, each entangled with the other, that stand between a woman and the care she requires. For many women, the first or second barrier may be possible to overcome, but the third, fourth, or fifth ultimately proves an insurmountable hurdle, even before the issue of travel distance or time arises. Looking at this matrix comprehensively illuminates the ways it is exploited and exacerbated by H.B. 2 and makes clear how the challenged provisions unconstitutionally limited meaningful access to the abortion right.

Though Ana was ultimately able to secure the abortion she sought, because of H.B. 2 many women who sought the same care since 2013 were not as fortunate.³⁴ For these women, the regulations so strikingly limited abortion access that they were prevented from practically effectuating their choice. Without the ability to actually secure the abortion one seeks, the fundamental right recognized in *Roe v. Wade* is reduced to a mere myth.³⁵

Grande Valley, 30 COLUM. J. GENDER & L. 84, 95 n.52 (2015).

32 *Id.* See also NLIRH Brief, *supra* note 21, at 9.

33 NLIRH Brief, *supra* note 21, at 9; Manny Fernandez, *Checkpoints Isolate Many Immigrants In Texas' Rio Grande Valley*, N.Y. TIMES, Nov. 22, 2015, <http://www.nytimes.com/2015/11/23/us/checkpoints-isolate-many-immigrants-in-texas-rio-grande-valley.html> [<https://perma.cc/VNZ2-Y2CY>].

34 Data recently released by the Texas Department of State Health Services shows 54,902 abortions performed in 2014. TEX. DEPT. OF STATE HEALTH SERVS., TABLE 33 SELECTED CHARACTERISTICS OF INDUCED TERMINATIONS OF PREGNANCY TEXAS RESIDENTS (2014), <http://www.dshs.texas.gov/chs/vstat/vs14/t33.aspx> [<https://perma.cc/YN8S-V23Z>] (last visited July 13, 2016). This number is a significant decrease from 2013, when data showed 63,849 abortions performed in Texas. TEX. DEPT. OF STATE HEALTH SERVS., TABLE 33 SELECTED CHARACTERISTICS OF INDUCED TERMINATIONS OF PREGNANCY TEXAS RESIDENTS (2013), <https://dshs.texas.gov/chs/vstat/vs13/t33.aspx> [<https://perma.cc/5ZWQ-PCUH>] (last visited July 13, 2016). The reduction was a 14.3% drop and disproportionately impacted Latinas, 4,409 (18.3%) fewer of whom received abortion. See also Mary Tuma, *Abortions Decrease in Texas After HB 2, Data Shows*, AUSTIN CHRON. (June 30, 2016), <http://www.austinchronicle.com/daily/news/2016-06-30/abortions-decrease-in-texas-after-hb-2-data-shows> [<https://perma.cc/XX8Q-BXHH>].

35 *Wegrzynowski & Smolczewski v. Poland*, No. 33846/07 Eur. Ct. H.R. ¶ 55 (2013) (fundamental rights must be “practical and effective” not “theoretical or illusory”); see also *Tysiack v. Poland*, 2007-I Eur. Ct. H.R. 219, 248; NLIRH Brief, *supra* note 21, at 16–17.

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In 1992, *Planned Parenthood v. Casey* reaffirmed the right to abortion and established the undue burden test. In the course of its analysis, the Court, in a plurality opinion, declared the right to abortion, “the ultimate control over [a woman’s] destiny and her body.”³⁶

Anti-choice activists often attempt to paint women, and especially women of color, as exploited victims, unknowingly duped into having abortions—*without* control over their own destinies. Yet, in addition to evidencing the extreme undue burdens women face in accessing abortion care, the stories in our brief also illuminated the certitude and resilience with which women act. They work overtime hours, take payday loans, and risk their jobs³⁷—and sometimes much more³⁸—in order to do what they know is right for their lives and their families. But just because some women can access these resources, does not mean all are able to. And, more to the point, women’s constitutional and human rights should not and cannot be contingent upon their abilities to maneuver through a state-created and -imposed obstacle course—the financial, practical, and emotional costs of which can be devastating.

The Supreme Court ruling in *Whole Woman’s Health v. Hellerstedt* prevented the further evisceration of abortion access in Texas.³⁹ Had H.B. 2 gone into full effect, huge swaths of Texas would have been left without an abortion provider. Drives covering 550 miles, the distance between El Paso and San Antonio, would have become a more frequent reality for Latina women and all Texans seeking abortion services. *Whole Woman’s Health* acknowledges the unacceptability and unconstitutionality of such a reality.⁴⁰ But, according to the Guttmacher Institute, four states other than Texas enforce laws requiring physicians to have admitting privileges.⁴¹ At least twenty states enforce laws similar to

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

37 *See generally* NLIRH Brief, *supra* note 21.

38 *Id.* at 34–38 (describing both global and Texas-specific data about the rise in self-induced abortion resulting from increased restrictions on abortion access).

39 *Whole Woman’s Health v. Hellerstedt*, 579 U.S. ___ (2016) (holding that the surgical center requirement and the admitting privileges requirement of H.B. 2 unconstitutionally impose an undue burden).

40 *Id.* (noting that the gap left by clinic closures would not soon be filled, contributing to the ruling that the provisions in question are unconstitutional).

41 GUTTMACHER INST., STATE POLICIES IN BRIEF: TARGETED REGULATION OF ABORTION PROVIDERS (2016), https://www.guttmacher.org/sites/default/files/pdfs/spibs/spib_TRAP.pdf [https://perma.cc/YP4R-2FF8]

Texas' ambulatory surgical center provisions.⁴² Only one abortion clinic remains open in Mississippi.⁴³ Missouri also only has one clinic.⁴⁴ North Dakota, South Dakota, and Wyoming each only have one clinic.⁴⁵ After *Whole Woman's Health*, the laws that reduced clinic numbers to such extreme lows are presumptively unconstitutional,⁴⁶ but, as in Texas, it will take time for litigation to prove as much and it will take years for providers to rebuild and reopen their doors. In the meantime, women will be forced to drive hundreds of miles to seek the care constitutionally guaranteed to them. With that distance comes a long series of obstacles and a violation of women's constitutional and human rights to dignity and self-determination. Judges evaluating these regulations would be remiss to think of this burden as a matter of mere miles. *Whole Woman's Health v. Hellerstedt* makes clear that judges no longer can.⁴⁷

(Missouri, North Dakota, Tennessee, and Utah each require hospital admitting privileges). MO. REV. STAT. § 188.080 (2012); N.D. CENT. CODE 14-02.1-04 (West); TENN. CODE ANN. § 39-15-202(j)(1) (West); UTAH ADMIN. CODE r. 432-600-13 (2016).

42 *Id.* E.g. MO. REV. STAT. §197.200 (2015); N.C. GEN. STAT. § 90-21.83 (2011).

43 Esme E. Deprez, *U.S. Abortion Rights Fight*, BLOMBERG QUICKTAKE (July 7, 2016), <http://www.bloomberg.com/quicktake/abortion-and-the-decline-of-clinics> [<https://perma.cc/WF8N-MWWT>].

44 *Id.*

45 *Id.*

46 *Id.*

47 *Whole Woman's Health v. Hellerstedt*, 579 U.S. __ (2016) (“We recognize that increased driving distances do not always constitute an ‘undue burden.’”) (citing *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 885–87 (1992) (joint opinion of O’Connor, Kennedy, and Souter, JJ.)). But here, those increases are but one additional burden, which, when taken together with others that the closings brought about, and when viewed in light of the virtual absence of any health benefit, lead us to conclude that the record adequately supports the District Court’s “undue burden” conclusion.”).