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Supreme Court's Abortion Ruling Pulls Back Curtain On Licensing Laws

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A 5-3 majority of the Supreme Court today struck down two medical-licensing requirements on the grounds that they were unnecessary and a thinly veiled attempt to serve an agenda other than protecting patients. The requirement happened to apply to abortion doctors. Regardless of one's views on abortion, however, people on both sides of that issue and of all political stripes can now agree states use medical-licensing laws to advance the interests someone other than the patient those laws purportedly serve.

In 2013, Texas passed a law requiring doctors to have admitting privileges at a hospital within 30 miles if they wanted to perform abortions. It further required abortion facilities to meet all regulations the state imposes on ambulatory surgical centers (which perform surgical procedures that do not require an overnight stay). Supporters claimed their goal was to protect women obtaining abortions by ensuring the same level of safety patients receive at an ambulatory surgical center, and quick access to intensive hospital care when necessary. Critics claimed these requirements are unnecessary and that the actual purpose of the law was to reduce the number of abortions in Texas. The law reportedly caused the number of abortion clinics in Texas to fall by 50%.

The majority struck down the law because there was "no significant health-related problem for the new law to cure." It found "abortion was an extremely safe procedure with very low rates of complications and virtually no deaths" and "was also safer than many more common procedures not subject to the same level of regulation." With regard to the facilities requirement, it cited:

evidence…that the new provision imposes a number of additional requirements that are generally unnecessary in the abortion clinic context; that it 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.

It also found an “absence of any contrary evidence.”

Abortion opponents naturally object that abortions are “safe” or involve “no deaths.” To the dissenting justices, however, that was not the issue. The dissenters objected that because the majority was “determined to strike down two provisions of a new Texas abortion statute in all of their applications, [it] simply disregard[ed] basic rules that apply in all other cases.”

All sides should therefore be able to agree on what economists have known for years. When governments impose licensing requirements on professionals or facilities, it often to benefit someone other than the consumer. In almost all cases, those rules harm consumers by restricting the availability of the regulated services.

Economist Shirley Svorny notes that different groups of providers, from physicians to various groups representing mid-level clinicians, routinely lobby for licensing requirements that increase their incomes by imposing unnecessary requirements on their competitors:

In his 1963 article on health economics in the *American Economic Review*, Nobel Laureate Kenneth Arrow noted that state licensing laws were needlessly restrictive, requiring physicians to perform tasks that could be performed ably and less expensively by less-skilled professionals…

Organizations representing mid-level clinicians—including nurse practitioners, physician assistants, nurse midwives, physical therapists, podiatrists, and optometrists, among many others—continue to advocate broader scopes of practice for their members, ostensibly to increase access to care. However, these same groups are less concerned about access to care when it comes to the role of other clinicians. And they are anxious to raise education requirements for new entrants to their professions. Such requirements clearly reduce access.

An important question is whether such determinations even belong in the political arena, where decisions are subject to intense lobbying by parties whose interests might not align with those of consumers. Researchers at the University of California, San Francisco, Center for the Health Professions observe, “Interest groups with strong lobbies play a significant role in shaping [scope-of-practice] legislation.”

Svorny argues that such flaws mean that medical-licensing laws harm patients more than they help. She calls for eliminating licensing entirely.

Whatever the merits of the Supreme Court’s ruling in *Whole Woman’s Health v. Hellerstedt*, it can help broaden public understanding about the harmful effects of licensing laws.

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