

The Supreme Court - December 10, 2021

by Ian Blodger

Today, the Supreme Court of the United States issued the following decision:

Whole Woman's Health v. Jackson, No. 21-463: Abortion providers brought a pre-enforcement challenge to a recently enacted Texas statute that "prohibits physicians from 'knowingly perform[ing] or induc[ing] an abortion on a pregnant woman if the physician detected a fetal heartbeat for the unborn child' unless a medical emergency prevents compliance." That law does not allow state officials to bring criminal prosecutions or civil actions to enforce the law but instead directs enforcement through "private civil actions" culminating in injunctions and statutory damages awards against those who perform or assist with prohibited abortions. The District Court denied the defendants' motions to dismiss based on sovereign immunity and lack of standing. On interlocutory appeal, the Fifth Circuit denied the petitioners' request for an injunction barring the law's enforcement pending resolution of the merits of the defendants' appeals. Today, the Court held that the petitioners may pursue a pre-enforcement challenge against certain of the named defendants but not others. The Court declined to address the ultimate merits question—namely, whether the Texas law is consistent with the Federal Constitution. Justice Gorsuch issued the Court's opinion, joined by Justices Thomas (except as to one part of the opinion), Alito, Kavanaugh, and Barrett. Justice Thomas, in a separate opinion, wrote to explain that, in his view, "petitioner may not maintain suit against any of the governmental respondents." Chief Justice Roberts, joined by Justices Breyer, Sotomayor, and Kagan, filed an opinion concurring in the judgment in part and dissenting in part, noting, *inter alia*, that the "clear purpose and actual effect of [the Texas law] has been to nullify this Court's rulings" on abortion rights. Justice Sotomayor, joined by Justices Breyer and Kagan, filed a separate opinion concurring in the judgment in part and dissenting in part, criticizing the Court for "foreclosing suit against state-court officials and the state attorney general, . . . effectively [inviting] other States to refine [the Texas law's] model for nullifying federal rights."

View the Court's [decision](#).

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