



**The Supreme Court Has Said It Will Hear
a Major Abortion Case from Louisiana.
Here's What You Need to Know.**

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Editor's Note (2/27/2020): Since the time of initial publication, the name of the case, *June Medical Services L.L.C. v. Gee*, has changed to *June Medical Services L.L.C. v. Russo*.

The U.S. Supreme Court has agreed to hear a major abortion case from Louisiana. The name of the case is *June Medical Services L.L.C. v. Gee*. The Court is expected to hear arguments on March 4, 2020 and issue a decision by early summer 2020.

Why does this case matter?

This case involves two main issues.

One issue involves the constitutionality of a Louisiana law requiring abortionists who perform abortions to have admitting privileges at a hospital within 30 miles of where they perform the abortion.

The other issue involves the standards governing when abortion businesses and individual abortionists can file abortion rights lawsuits instead of those lawsuits being brought by individuals seeking access to abortion. The technical term for this issue is “standing,” as in who has “standing” to file a lawsuit.

In this case, the only plaintiffs challenging the law consist of one abortion business and two individual abortionists. No individual woman seeking access to abortion is a plaintiff in this case.

If the abortionists and abortion businesses do not have “standing” to bring this case, then there can't be a case, at least in federal court. Federal courts can't decide cases where the plaintiffs don't have standing.

Federal courts have twisted normal standing rules in favor of abortion advocates. A ruling against the standing of the abortion business and individual abortionists in this case would begin to undo this pro-abortion bias and make it more difficult for professional abortion activists to challenge pro-life laws in the future.

If the Supreme Court rules against the abortionists and abortion business on standing, then the Court probably won't address the constitutionality of the Louisiana law requiring abortionists who perform abortions to have admitting privileges at a hospital within 30 miles of where they perform the abortion.

However, even if the Court does not issue a formal legal ruling on the admitting privileges requirement, one or more justices might author opinions clarifying the law in this area,

especially the meaning of the 2016 Supreme Court decision in *Whole Woman’s Health v. Hellerstedt*. In such an opinion, one or more justices could express their view that the Louisiana admitting privileges requirement and similar laws should be upheld. Such an opinion could influence lower courts when deciding similar cases and set the stage for a favorable ruling from the Supreme Court in a later case where standing has been established.

If the abortion business and individual abortionists in this case have standing, and the Supreme Court reaches the question of the Louisiana admitting privileges requirement, the Court could uphold or strike down that law.

A decision upholding the admitting privileges law could take multiple forms ranging from a narrow affirmation of the circuit court based on the facts in this case, a broader ruling that also affirmed that the balancing test imposed by *Hellerstedt* supplements instead of supplants the undue burden test established in the 1992 *Planned Parenthood v. Casey* case, or an even broader ruling yet overruling *Hellerstedt*. The scope of a favorable ruling, and the reasons given for that outcome, would determine how much influence the case might have on other cases involving similar laws.

A decision against the Louisiana admitting privileges requirement would represent a bad outcome. Not only would it lead to a bad result in this case, but an adverse ruling, depending on the reasons given by the Court for its decision, could also make it harder for other states to defend similar health and safety legislation.

Who are the parties?

The Louisiana admitting privileges law is being challenged by one abortion business and two abortionists. The name of the abortion business is June Medical Services L.L.C., d/b/a Hope Medical Group for Women. The abortionists have participated in this litigation pseudonymously as Dr. John Doe 1 and Dr. John Doe 2.

On the other side of the case, defending the Louisiana law, is the Secretary of the Louisiana Department of Health, Dr. Rebekah Gee.

Are there two cases or just one?

Technically, there are two cases that have been combined into one case. Both cases involve the same parties. The only difference is that the abortion business and individual abortionists sought Supreme Court review on one issue and Secretary Gee sought Supreme Court review on another issue. As a result, two petitions for review were filed with the Supreme Court.

The Supreme Court granted review in both cases and then consolidated them for briefing and oral argument.

For practical purposes, the simplest way to think about the case is “one case with two

issues.” The first issue is whether Louisiana can require abortionists to have admitting privileges at a local hospital. The second issue is whether the abortionists in this case have standing to bring the case in the first place.

What is the timeline for this case going forward?

As the case continues to unfold, the key events will involve briefing, oral argument, and a decision from the Supreme Court.

- **Briefing.** All briefing in the case should be finished around the middle of January 2020.
- **Oral argument.** Oral argument in the case has been scheduled for March 4, 2020.
- **Decision.** The Supreme Court will likely issue its ruling by the end of June or early July 2020.

Depending on how the Supreme Court decides the case, further litigation could take place in the trial court, followed by additional appeals.

Is this case a direct challenge to *Roe*?

The case doesn’t directly raise the core issues in *Roe v. Wade* and *Planned Parenthood v. Casey*. The Court could choose to address those issues anyhow, but typically the Court would first request briefing from the parties on those issues.

At the same time, even if this case does not reach the core legal issues of the abortion debate, a victory in this case could help to clear the pathway to getting there. A ruling against the standing of abortion businesses and individual abortionists to file abortion rights lawsuits would put abortion advocates on their heels and make it more difficult for them to challenge pro-life laws.

Further, even if the Court does not reach the merits of the Louisiana admitting privileges requirement and roll back its misguided ruling in the 2016 *Hellerstedt* case, individual justices could still author opinions that provide guidance and encouragement to lower courts confronted with similar issues.

If the Supreme Court doesn’t use the Louisiana admitting privileges case to overturn *Roe* and *Casey*, it will have plenty of other opportunities in the coming years to reach those core issues due to the large number of abortion cases currently making their way through state and federal courts. Cases involving pain-capable, 20-week abortion limits, prenatal antidiscrimination protections for children with Down syndrome, and gestational limits on abortion at 15 or 18 weeks or some other point short of viability would all provide an opportunity for the Supreme Court to change course on abortion and even to overrule *Roe* and *Casey* altogether.

Explain the issue of “standing” a bit further.

As the Supreme Court has [summarized](#) it, the legal doctrine of “standing” refers to whether a specific individual “is entitled to have a federal court resolve his grievance.”

In simple terms, to have standing in federal court, a plaintiff must show that the defendant did something or is about to do something that will injure the plaintiff and the court can make it better.

A pregnant woman seeking access to abortion rights can generally satisfy these requirements even if she is no longer pregnant.

The question presented by the Louisiana admitting privileges case is whether an abortion business or individual abortionist can bring the lawsuit based on the woman’s legal interests instead of their own. This issue is called “third-party” standing.

The general rule of standing, [in the words of the Supreme Court](#), is that a party “must assert his own legal rights and interests, and cannot rest his claim on the legal rights of third parties.”

“Exceptions to that general rule,” [Louisiana argued in its cert petition](#), “are limited to situations where the plaintiff proves a ‘close’ relationship with the third-party who is somehow ‘hinder[ed]’ from asserting her own rights” (quoting Supreme Court).

In other words, to have “third-party” standing, three things must be true:

1. The underlying “represented” party (the woman seeking abortion rights, in this case) must be able to satisfy the general standing requirements.
2. The actual plaintiff must have a sufficiently “close” relationship with the represented “third party” not present in the case.
3. The represented party (*i.e.*, the person who has satisfied the general standing requirements but is not participating in the lawsuit) must be “hindered” from asserting their own rights.

Louisiana is arguing that the abortion business and the two abortionists cannot satisfy these requirements in this case.

What would be the impact of a favorable ruling on standing?

A ruling against the standing of abortion businesses and individual abortionists would present genuine benefits. In this case, a ruling against the standing of abortion businesses and individual abortionists would end the case. That outcome could result directly from the decision of the Supreme Court or after additional litigation in the lower courts.

One question is whether a win on standing would make a difference if individual women

could simply bring the very same lawsuits that abortion businesses and individual abortionists previously had tried to bring themselves. It is true that individual women seeking access to abortion could still bring abortion cases and have done so in several significant abortion cases. However, trimming back third-party standing for abortion businesses and individual abortionists would still represent a significant pro-life victory.

For one thing, making it tougher for abortion businesses and individual abortionists to file abortion rights lawsuits would present meaningful hardships to abortion advocates. Instead of representing commercial enterprises and professional abortionists, abortion advocates would have to find an individual woman eligible and willing to engage in a prolonged process of litigation.

The challenge to abortion advocates would be highlighted in cases involving health and safety regulations. In health and safety cases the interests of abortion businesses and individual abortionists, on the one hand, and the interests of women, on the other hand, are categorically opposed. Requiring the presence in these cases of an individual woman seeking access to abortion would shine a light on the intensely factual questions about how laws meant to increase women's safety can be said to violate the Constitution. If the individual plaintiff could not prove that she was personally burdened by the health and safety law, she would lose an as applied challenge and, as to a facial challenge, such a failure of proof might increase judicial scrutiny of whether, in fact, the law burdens enough other women to trigger invalidation under applicable legal standards.

More generally, a favorable ruling on standing would begin to undo the biased treatment of abortion rights by federal courts. Justice Thomas, in his dissent in the *Hellerstedt* case, explained that the Supreme Court has twisted normal standing rules to favor abortion businesses and individual abortionists. "Ordinarily," Justice Thomas wrote, "plaintiffs cannot file suits to vindicate the constitutional rights of others. But the Court employs a different approach to rights that it favors. So in this case and many others," Justice Thomas continued, "the Court has erroneously allowed doctors and clinics to vicariously vindicate the putative constitutional right of women seeking abortions."

"Above all," Justice Thomas wrote later in the same opinion, "the Court has been especially forgiving of third-party standing criteria for one particular category of cases: those involving the purported substantive due process right of a woman to abort her unborn child."

The *June Medical* case before the Court this term provides an opportunity to change course and, as Louisiana has put it, "clarify that abortion providers are subject to the same standing rules as everyone else."

What is an "admitting privileges" requirement?

The abortion business and individual abortionists in this case have challenged the

Louisiana Unsafe Abortion Protection Act, also referred to as Act 620 or simply the Act. If the Court rules that the abortion business and individual abortionists have standing to bring this lawsuit or otherwise reaches the merits of the admitting privileges requirement, it should uphold the law.

The Act requires “a physician performing or inducing an abortion” to “[h]ave active admitting privileges at a hospital that is located not further than thirty miles from the location at which the abortion is performed or induced and that provides obstetrical or gynecological health care services.”

The term “active admitting privileges” means that “the physician is a member in good standing of the medical staff of a hospital that is currently licensed by the department, with the ability to admit a patient and to provide diagnostic and surgical services to such patient.”

[In the words of the U.S. Court of Appeals for the Fifth Circuit](#), which upheld the law, “Act 620 is premised on the state’s interest in protecting maternal health.” The court quotes Louisiana Representative Katrina Jackson who, in introducing Act 620, explained, “[I]f you are going to perform abortions in the State of Louisiana, you’re going to do so in a safe environment and in a safe manner that offers women the optimal protection and care of their bodies.”

The court also explained that, “[d]uring consideration of the Act, the Louisiana Senate Committee on Health and Welfare heard testimony from women who had experienced complications during abortions and had been treated harshly by the provider.” The court cites as an example the experience of one woman who “testified that when she underwent an abortion and began to hemorrhage, ‘the abortion doctor could see that something had gone wrong’ but, instead of assisting her, ‘told [her] to get up and get out.’” This woman, the court says, “eventually required an emergency dilation and curettage (‘D&C’). Testimony also established,” the court continued, “numerous health and safety violations by Louisiana abortion clinics.”

How is Louisiana’s case any different from the *Hellerstedt* case out of Texas?

The laws are similar on paper, but the legal question is what effect the laws have in the real world. In terms of real-world consequences, the Louisiana case and the Texas case are very different.

The Supreme Court found that the Texas admitting privileges requirement led to the closure of approximately half of Texas abortion facilities, from about 40 to about 20.

In contrast, the circuit court in this case explained that the Louisiana admitting privileges requirement would result in a “potential increase” in wait time of only 54 minutes at only one of the three abortion facilities in Louisiana and then only for “at most 30% of women.”

Here are five key factual differences between the *Hellerstedt* case from Texas and this case from Louisiana, as set out by the Fifth Circuit:

- “Almost all Texas hospitals required that for a doctor to maintain privileges there, he or she had to admit a minimum number of patients annually. Few Louisiana hospitals make that demand.”
- “Because Texas doctors could not gain privileges, all but 8 of 40 clinics closed. Here, only one doctor at one clinic is currently unable to obtain privileges; there is no evidence that any of the clinics will close as a result of the Act.”
- “In Texas, the number of women forced to drive over 150 miles increased by 350%. Driving distances will not increase in Louisiana.”
- “Unlike the record in Louisiana, the record in Texas reflected no benefits from the legislation.”
- “Finally, because of the closures, the remaining Texas clinics would have been overwhelmed, burdening every woman seeking an abortion. In Louisiana, however, the cessation of one doctor’s practice will affect, at most, only 30% of women, and even then not substantially.”

“That is only a summary,” the Fifth Circuit wrote. “As we explain in detail,” the court said, “other facts underscore how dramatically less the impact is in Louisiana than in Texas.”

Did the Fifth Circuit ignore *Hellerstedt* in upholding the Louisiana law?

No.

The Fifth Circuit understood that the Louisiana law was similar on paper to the Texas law that the Supreme Court had struck down in the 2016 *Hellerstedt* case. And the Fifth Circuit painstakingly applied the Supreme Court’s 2016 ruling in *Hellerstedt*.

The Fifth Circuit reached a different outcome in the Louisiana case because *Hellerstedt* requires courts to conduct a “fact-bound” analysis and the facts in Louisiana were significantly different from the facts in Texas.

The Louisiana admitting privileges law was originally struck down in the trial court. On appeal, the Fifth Circuit carefully examined the facts in Louisiana using the relevant legal standard for reviewing the fact findings of a trial court. The Fifth Circuit concluded that the record in the Louisiana case before it and the record in the Texas case resolved by the Supreme Court in *Hellerstedt* “diverge in all relevant respects.”

According to the Fifth Circuit, the district court in the Louisiana case had “overlooked that the facts in the [Louisiana] case are remarkably different from those that occasioned the invalidation of the Texas statute in [*Hellerstedt*]. Here, unlike in Texas,” the Fifth Circuit explained, “the Act does not impose a substantial burden on a large fraction of women under [*Hellerstedt*] and other controlling Supreme Court authority.” Indeed, the Fifth Circuit wrote, “Careful review of the record reveals stark differences between the record before us and that which the [Supreme] Court considered in [*Hellerstedt*].”

“Because the Louisiana Act passes muster even under the stringent requirements of [*Hellerstedt*] and the other Supreme Court decisions by which we are strictly bound,” the Fifth Circuit announced, “we reverse and render a judgment of dismissal.”

The Fifth Circuit clarified that the facial challenge to the Louisiana law did not fail “only because the facts are less compelling in Louisiana than in Texas or that the facts in Texas are borderline such that any law imposing a burden even slightly less than in Texas would be immune to attack. Instead,” the court wrote, “Act 620 passes muster independently and on its own terms. We make continuing references to the Texas statute invalidated in [*Hellerstedt*],” the Fifth Circuit explained, “to emphasize the dramatically different circumstances that called for the opposite result for Texas and to show how it is that the Louisiana law plainly satisfies both [*Hellerstedt*] and *Casey*.”

Did the 2016 *Hellerstedt* case create a new legal standard for abortion cases?

Before *Hellerstedt*, it was thought that a health and safety regulation would pass muster if it was reasonably related to a legitimate government interest and did not place a “substantial obstacle” in the path of a woman seeking a pre-viability abortion. This is called the “undue burden” standard. The Court invented the “undue burden” standard in the 1992 *Planned Parenthood v. Casey* case.

After the 2016 *Hellerstedt* case, courts must conduct a “free-form balancing test” (Justice Thomas’s words) that “consider[s] the burdens a law imposes on abortion access together with the benefits those laws confer.”

A key question is whether the balancing test required by *Hellerstedt* **supplements or supplants** the undue burden standard.

If the *Hellerstedt* balancing test **supplants** the undue burden standard, that means pro-life laws can be struck down if any burden, no matter how slight, outweighs the benefits.

If the *Hellerstedt* balancing test **supplements** the undue burden standard, that means that any burden created by a pro-life law must still be “substantial,” even if that burden outweighs the benefits of the law.

How did the Fifth Circuit rule on whether the *Hellerstedt* balancing test supplements or supplants the undue burden standard?

The Fifth Circuit ruled that the *Hellerstedt* balancing test supplements—not supplants—the undue burden standard.

The *Hellerstedt* analysis, wrote the Fifth Circuit, “is rooted in” the 1992 Supreme Court ruling in *Planned Parenthood v. Casey*, “which defined an ‘undue burden’ as ‘shorthand for the

conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.” The Supreme Court in *Hellerstedt*, recalled the Fifth Circuit, “explained that *Casey* ‘requires that courts consider the burdens a law imposes on abortion access together with the benefits those laws confer.’”

“There is no doubt,” the Fifth Circuit wrote, that *Hellerstedt* “imposes a balancing test [However,] it is not a ‘pure’ balancing test under which *any* burden, no matter how slight, invalidates the law. Instead, the burden must still be substantial”

The Fifth Circuit went on to explain that the *Hellerstedt* Court, “[q]uoting *Casey* as cited above . . . [.] began by emphasizing that to fail constitutional scrutiny, a law must place ‘a substantial obstacle in the path of a woman seeking an abortion.’” And *Casey*, the Fifth Circuit wrote, “expressly allows for the possibility that not every burden creates a ‘substantial obstacle.’”

“Thus,” the Fifth Circuit announced, in laying down a very important conclusion of law, “even regulations with a minimal benefit are unconstitutional only where they present a substantial obstacle to abortion.”

Put another way, “A minimal burden even on a large fraction of women does not undermine the right to abortion. To conclude otherwise,” the Fifth Circuit wrote, “would neuter *Casey*, and any reasonable reading of [*Hellerstedt*] shows that the Court only reinforced what it had said in *Casey*.”

To be clear, the Supreme Court should overturn *Roe v. Wade* and return the abortion issue to the states. If it doesn’t do that, then the Supreme Court should overturn *Hellerstedt* and abandon the “free-form” balancing test it imposed.

However, if the Court fails to overturn *Roe* or, second best, to overturn *Hellerstedt*, then the Supreme Court should adopt the holding set out by the Fifth Circuit and conclude, as the Fifth Circuit did, that any net burden found under the *Hellerstedt* balancing test must still be “substantial.”

What are the potential outcomes in this case?

There are several potential outcomes in this case.

If the Supreme Court agrees with Louisiana on the standing question, the case could be dismissed without a decision on the admitting privileges regulation. Dismissal could occur at the Supreme Court level or following additional proceedings at the trial court level.

A ruling against the standing in this case could have positive impact on similar cases where the only plaintiffs consisted of abortion businesses and individual abortionists. In general, as stated above, making it tougher for abortion businesses and individual abortionists to file

abortion rights lawsuits would present meaningful hardships to abortion advocates especially in cases involving health and safety regulations where the interests of abortion businesses and individual abortionists, on the one hand, and the interests of women, on the other hand, are categorically opposed. Individual women seeking access to abortion could still bring abortion cases but trimming back third-party standing for abortion businesses and individual abortionists would represent a significant pro-life victory even if it meant the Court did not rule on the merits of the admitting privileges law in this case.

If the abortion business and individual abortionists in this case have standing, and the Supreme Court reaches the question of the Louisiana admitting privileges requirement, the Court could uphold or strike down that law.

A decision upholding the admitting privileges law could take multiple forms ranging from a narrow affirmation of the circuit court based on the facts in this case, a broader ruling that also affirmed that the balancing test imposed by *Hellerstedt* supplements instead of supplants the undue burden test set out in *Casey*, or an even broader ruling yet overruling *Hellerstedt*. The scope of a favorable ruling, and the reasons given for that outcome, would determine how much influence the case might have on other cases involving similar laws.

A decision against the Louisiana admitting privileges requirement would represent a bad outcome. Not only would it lead to a bad result in this case, but an adverse ruling, depending on the reasons given by the Court for its decision, could also make it harder for other states to defend similar health and safety legislation.

What is the legislative and litigation history of this case?

This case has been in litigation for more than half a decade. Here are some of the key events.

- **February 25, 2014.** Louisiana State Representative Katrina Jackson (D), a member of SBA List's National Pro-Life Women's Caucus, introduced the Unsafe Abortion Protection Act as H.B. 388.
- **June 12, 2014.** Then-Governor Bobby Jindal (R) signs the Unsafe Abortion Protection Act into law as Act 620 with an effective date of September 1, 2014.
- **August 22, 2014.** Plaintiffs file lawsuit in federal district court (U.S. District Court for the Middle District of Louisiana). Case is assigned to District Judge John W. deGravelles, who was appointed to the federal bench by President Obama.
- **August 31, 2014.** Judge deGravelles grants the plaintiffs' motion for a temporary restraining order against Act 620.
- **January 26, 2016.** Judge deGravelles rules that Act 620 violates U.S. Constitution and enters a preliminary injunction order.
- **February 24, 2016.** A three-judge panel of the U.S. Court of Appeals for the Fifth Circuit stays Judge deGravelles's preliminary injunction pending appeal. Act 620 goes into effect.

- **March 4, 2016.** U.S. Supreme Court vacates the stay entered by the Fifth Circuit. Act 620 is once again enjoined.
- **June 27, 2016.** U.S. Supreme Court decides *Whole Woman’s Health v. Hellerstedt*.
- **August 24, 2016.** Fifth Circuit remands the case to the district court so that the district court can engage in additional factfinding as required by the *Hellerstedt* decision.
- **April 26, 2017.** Judge deGravelles rules that Act 620 violates U.S. Constitution and enters a permanent injunction order.
- **September 26, 2018.** By a vote of 2-1, a three-judge panel of the Fifth Circuit upholds Act 620, reversing Judge deGravelles’s ruling.
- **January 18, 2019.** In a 9-6 vote, the Fifth Circuit denies request for the full court to review the panel decision (known as “en banc” review).
- **February 7, 2019.** The Supreme Court stays the Fifth Circuit decision upholding Act 620 pending the timely filing and disposition of a petition for a writ of certiorari.
- **April 17, 2019.** Abortion business and individual abortionists file a petition for a writ of certiorari asking the Supreme Court to review the Fifth Circuit ruling.
- **May 20, 2019.** Louisiana files a conditional cross-petition asking the Supreme Court to review the question of standing.
- **October 4, 2019.** Supreme Court grants review as requested by both parties.

Where can I follow the legal proceedings in this case?

- [Supreme Court docket for *June Medical Services L.L.C. v. Gee*, No. 18-1323](#) (admitting privileges requirement)
- [Supreme Court docket for *Gee v. June Medical Services L.L.C.*, No. 18-1460](#) (standing)
- [Fifth Circuit panel decision on the merits](#)
- [Opinion in *Whole Woman’s Health v. Hellerstedt*, No. 15-274 \(S.Ct. 2015\)](#)
- [Legislative history page for Louisiana Act 620](#)

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