

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 21, 2020

Lyle W. Cayce
Clerk

No. 17-51060

WHOLE WOMAN'S HEALTH, *on behalf of itself, its staff, physicians and patients*; PLANNED PARENTHOOD CENTER FOR CHOICE, *on behalf of itself, its staff, physicians, and patients*; PLANNED PARENTHOOD OF GREATER TEXAS SURGICAL HEALTH SERVICES, *on behalf of itself, its staff, physicians, and patients*; PLANNED PARENTHOOD SOUTH TEXAS SURGICAL CENTER, *on behalf of itself, its staff, physicians, and patients*; ALAMO CITY SURGERY CENTER, P.L.L.C., *on behalf of itself, its staff, physicians, and patients, doing business as ALAMO WOMEN'S REPRODUCTIVE SERVICES*; SOUTHWESTERN WOMEN'S SURGERY CENTER, *on behalf of itself, its staff, physicians, and patients*; CURTIS BOYD, M.D., *on his own behalf and on behalf of his patients*; JANE DOE, M.D., M.A.S., *on her own behalf and on behalf of her patients*; BHAVIK KUMAR, M.D., M.P.H., *on his own behalf and on behalf of his patients*; ALAN BRAID, M.D., *on his own behalf and on behalf of his patients*; ROBIN WALLACE, M.D., M.A.S., *on her own behalf and on behalf of her patients*,

Plaintiffs—Appellees,

versus

KEN PAXTON, ATTORNEY GENERAL OF TEXAS, *in his official capacity*; JOHN CREUZOT, DISTRICT ATTORNEY FOR DALLAS COUNTY, *in his official capacity*; SHAREN WILSON, CRIMINAL DISTRICT ATTORNEY FOR TARRANT COUNTY, *in her official capacity*; BARRY JOHNSON, CRIMINAL DISTRICT ATTORNEY FOR MCLENNAN COUNTY, *in his official capacity*,

Defendants—Appellants.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:17-CV-690

Before STEWART, DENNIS, and WILLETT, *Circuit Judges*.¹

IT IS ORDERED that Appellants' joint opposed motion for stay pending appeal is DENIED.

¹ A separate opinion by Judge Dennis concerning the motion is forthcoming.

DON R. WILLETT, *Circuit Judge*, dissenting:

I would grant the State of Texas’s motion to stay the injunction.

The Supreme Court recently divided 4-1-4 in *June Medical Services LLC v. Russo*, 140 S. Ct. 2103 (2020). The opinions are splintered, but the takeaway seems clear: The three-year-old injunction issued by the district court in this case rests upon a now-invalid legal standard. See *Hopkins v. Jegley*, No. 17-2879, 2020 WL 4557687, at *1-2 (8th Cir. Aug. 7, 2020) (explaining that *June Medical* upended the previous cost-benefit balancing test for reviewing the constitutionality of abortion restrictions); *June Med. Servs.*, 140 S. Ct. at 2182 (Kavanaugh, J., dissenting) (“Today, five Members of the Court reject the *Whole Woman’s Health* cost-benefit standard.”).

I would grant the motion to stay. Additionally, I would remand the underlying merits appeal to the district court for reconsideration under the now-governing legal standard. See *Box v. Planned Parenthood of Ind. & Ky., Inc.*, No. 19-816, 2020 WL 3578672, at *1 (U.S. July 2, 2020) and *Box v. Planned Parenthood of Ind. & Ky., Inc.*, No. 18-1019, 2020 WL 3578669 (U.S. July 2, 2020) (remanding “for further consideration in light of *June Medical*”).

Because the majority does otherwise, I respectfully dissent.