

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

October 30, 2020

Lyle W. Cayce  
Clerk

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No. 17-51060

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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; 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.*

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

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(Opinion October 13, 2020, 5 CIR., 2020, 2020 WL 6042428)  
(Modified Opinion October 22, 2020, 5 CIR., 2020, 2020 WL 6218657)

Before OWEN, *Chief Judge*, and JONES, SMITH, STEWART, DENNIS,  
ELROD, HAYNES, GRAVES, HIGGINSON, COSTA, WILLETT, HO,  
ENGELHARDT, and WILSON, *Circuit Judges*.<sup>1</sup>

PER CURIAM:

A majority of the circuit judges in regular active service and not disqualified having voted in favor, on the Court's own motion, to rehear this case en banc,

IT IS ORDERED that this cause shall be reheard by the court en banc with oral argument on a date hereafter to be fixed. The Clerk will specify a briefing schedule for the filing of supplemental briefs. Pursuant to 5<sup>th</sup> Cir.R.41.3, the panel opinion in this case dated October 22, 2020, is vacated.

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<sup>1</sup>Judges Southwick, Duncan, and Oldham are recused in this case and did not participate in this decision.