

*JUNE MEDICAL SERVICES V. GEE*

U.S. SUPREME COURT AMICUS BRIEF OF MEMBERS OF THE LEGAL PROFESSION WHO  
HAVE EXERCISED THEIR CONSTITUTIONAL RIGHT TO AN ABORTION

Nearly thirty years ago, in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the U.S. Supreme Court observed that “[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.” 505 U.S. 833, 856 (1992). Three years ago, when the Supreme Court considered a Texas law restricting the constitutional right to choose, in *Whole Woman’s Health v. Hellerstedt*, 113 women in the legal profession who have had abortions came forward as amici to explain to the Court how safe and legal access to abortion care was critical to their lives and careers, and to the legal profession itself. They included former judges, law firm partners, general counsels of major corporations and institutions, a former state legislator, public defenders, members of legal services organizations, and professors teaching the coming generations of practitioners.

Their amicus brief, covered by [\*The New York Times\*](#), [\*The Washington Post\*](#), [\*The National Law Journal\*](#), [\*Slate\*](#), and other [news outlets](#), was described as “powerful,” “astonishing,” and “extraordinary.” The lawyers’ stories confirmed the *Casey* majority’s observation that “[a]n entire generation” and, indeed, multiple generations “ha[ve] come of age free to assume *Roe*’s concept of liberty in defining the capacity of women to act in society, and to make reproductive decisions.” *Id.* at 860 (opinion of the Court).

The 113 members of the legal profession who shared their names and stories in *Whole Woman’s Health* contributed a critical perspective to the Court and the public. Their lawyers at Paul, Weiss, Rifkind, Wharton & Garrison believe that the voices of attorneys and law students who have had abortions must be a part of the conversation again as the Supreme Court considers *June Medical Services v. Gee*, a case challenging a Louisiana law *identical* to the Texas law the Court struck down in *Whole Woman’s Health* just a few years ago. Indeed, it is especially important that lawyers stand up for the rule of law, precedent, and the preservation of well-established constitutional rights.

If you are a lawyer, law professor, or law student who has terminated a pregnancy and you are willing to be part of this effort, contact [JuneLawyersBrief@paulweiss.com](mailto:JuneLawyersBrief@paulweiss.com). In your email, please provide your name, contact information, state, and professional affiliation, and lawyers from Paul, Weiss will follow up. While all signatories are encouraged to share their stories if they so choose, doing so is **not required** for participation. The deadline to submit a narrative is **November 8, 2019** and the deadline to be a signatory is **November 20, 2019**.

By joining in this amicus brief, you will have the opportunity to be part of the broader effort to ensure that everyone seeking constitutionally protected abortion care is able to exercise “the ultimate control over [their] destiny and [their] body . . . [that is] implicit in the meaning of liberty.” *Casey*, 505 U.S. at 869 (plurality opinion).

### **CRITERIA FOR PARTICIPATION AS AMICI**

Lawyers and law students who:

- have terminated a pregnancy;
- are willing to have their names and employment affiliation listed on the brief. (Note: there will be a disclaimer that all signatories appear in their personal capacities and ***not*** on behalf of their employers.)

While signatories are additionally encouraged to share their narratives, doing so is not required for participation.

### **FAQs**

**If I want to get a sense of what this amicus brief will look like, where can I find the amicus brief that was previously filed in *Whole Woman’s Health v. Hellerstedt* on behalf of more than 110 women lawyers who exercised their constitutional right to have an abortion?**

**A:** That amicus brief can be found at this link:

<https://reproductiverights.org/document/whole-womans-health-v-cole-amicus-brief-from-janice-macavoy-janie-schulman-and-over-110-oth>

**Can I participate in this amicus brief if I wish to remain anonymous?**

**A:** The power of this brief resides not only in the narratives but also in the act of coming forward to share one’s story without the veil of anonymity. As a result, we will ask, as a general rule, that signatories disclose their names in order to participate as amici in the brief.

However, if you have a particularly compelling story to share but wish to keep your identity private, we encourage you to get in touch with us to discuss further, as we would consider including a very limited number of anonymous signatories.

**If you use my narrative, will you identify me as its author?**

**A:** No, we will only describe lawyers by generic sector and will not link individual narratives to signatories. We will follow the same convention as in the *Whole Woman’s Health* amicus brief—e.g. “One Amicus, a public defender, recounted...”; “Another Amicus, a litigation partner at a large law firm, described her experience . . .”.

**Will I need to disclose my employment affiliation to participate in the brief?**

**A:** We believe that the power of the brief resides as much in each story as in the act of telling it as an identified, specific member—or future member—of the legal profession. In order to illustrate for the Supreme Court that the right to access abortion is and has been critical to the legal profession itself, and for a broad cross-section of lawyers and lawyers-to-be, we will, as a general rule, ask that signatories disclose their position and employer. We will nevertheless include a disclaimer that all signatories appear in their personal capacities and do not purport to represent their employers or their employers' views.

**How will my story be used for this brief?**

**A:** Excerpts from selected stories will be used throughout the brief to support, contextualize, and illustrate the personal impact of the constitutionally protected right to abortion on the individual signatories and the profession.

We received more powerful, compelling narratives for the *Whole Woman's Health* brief than we were able to fit within the page limitations. Every single story informed the final product—including those not directly cited—and all could have been implemented to powerful effect.

**Can I choose to participate in the brief without sending you details about my personal story or without having my story quoted in the brief?**

**A:** Absolutely. While you are encouraged to share your personal experience with us, it is not required. Further, if you choose to share details about your abortion story with us but wish that we refrain from directly quoting excerpts from it in the brief, you can still be listed as a signatory.

We believe there will be tremendous power in the number and breadth of signatories, separate and apart from the narratives.

**Will you edit my personal story if you include it in the brief?**

**A:** Our goal is to share the signatories' stories in their own voices. To that end, we will edit the narratives shared with us *only* for length or to correct typos and grammatical errors.

**Will my story be used for other things beyond this brief?**

A: Paul, Weiss will not use your story for purposes beyond the filing of this brief, and will keep it confidential.

If you are interested in being part of other public education, media, and/or advocacy efforts in connection with the *June Medical* litigation in the Supreme Court, we encourage you to get in touch with the Center for Reproductive Rights at [lawyersnetworkinfo@reprorights.org](mailto:lawyersnetworkinfo@reprorights.org).

**Will I have to participate in media requests?**

A: While we anticipate that there will be opportunities to speak to the press for those who are interested, *media participation is not at all required for signatories*.

**I am a Transgender Male lawyer who has had an abortion. Can I participate in this brief?**

A: Yes. We would very much like to hear your story.

**I am a law student who has had an abortion. Can I participate in this brief?**

A: Yes. You are a future member of the legal profession and, as such, are a critical part of the conversation.

**I am a lawyer or law student who has not had an abortion, but I want to support this effort. What can I do?**

A: While you will not be able to be a signatory on this amicus brief, we encourage you to broadly share these materials with lawyers and law students who may be eligible and interested in participating as amici.

Additionally, if you are looking for other ways to support these efforts and the broader fight for reproductive rights, feel free to contact [lawyersnetworkinfo@reprorights.org](mailto:lawyersnetworkinfo@reprorights.org) for more information.

**When is the brief due?**

A: The brief must be filed with the Court on **December 2, 2019**.



## ***June Medical Services L.L.C. v. Gee***

### **Overview**

In 2020, the U.S. Supreme Court will consider the case *June Medical Services L.L.C. v. Gee*, challenging an admitting-privileges law (Act 620) passed by the Louisiana legislature that is identical to the Texas admitting-privileges law struck down in *Whole Woman's Health v. Hellerstedt*.

In *Whole Woman's Health*,<sup>1</sup> the Supreme Court held that a Texas state law requiring physicians who perform abortions to have admitting privileges at a local hospital was unconstitutional because it imposed an undue burden on women seeking abortions. However, in 2018, the Fifth Circuit upheld an admitting privileges law in Louisiana that is identical to Texas's unconstitutional law. Plaintiffs are presenting the following issue to the Court: *Whether the Fifth Circuit's decision upholding Louisiana's law requiring physicians who perform abortions to have admitting privileges at a local hospital conflicts with [the] Court's binding precedent in Whole Woman's Health.*

### **Case History**

- **August 22, 2014:** Center files challenge to the admitting privileges law (Act 620) in U.S. District Court for the Middle District of Louisiana.
- **January 26, 2016:** District Court grants a preliminary injunction barring enforcement of Act 620.<sup>2</sup> Louisiana takes an immediate appeal.
- **February 24, 2016:** U.S. Court of Appeals for the Fifth Circuit lifts the preliminary injunction.
- **March 5, 2016:** U.S. Supreme Court grants Plaintiffs' request for an emergency stay of the Fifth Circuit's decision.<sup>3</sup> Act 620 once again is blocked.
- **June 27, 2016:** U.S. Supreme Court decides *Whole Woman's Health v. Hellerstedt*,<sup>4</sup> and declares Texas's admitting privileges law unconstitutional. In light of the decision, the Fifth Circuit sends the Louisiana case back to the District Court for further consideration.
- **April 26, 2017:** District Court declares Act 620 unconstitutional under *Whole Woman's Health* and enters a permanent injunction.<sup>5</sup> Louisiana appeals.
- **September 26, 2018:** Fifth Circuit reverses the District Court's decision, declares Act 620 constitutional, and vacates the permanent injunction in a split (2-1) decision.<sup>6</sup>
- **January 18, 2019:** Fifth Circuit votes to deny Plaintiffs' petition to rehear the appeal en banc.<sup>7</sup>
- **January 25, 2019:** Plaintiffs file an Emergency Stay Application to the U.S. Supreme Court.
- **February 7, 2019:** U.S. Supreme Court, by a 5-4 vote, grants Plaintiffs' request for an emergency stay of the Fifth Circuit's decision.<sup>8</sup>
- **April 17, 2019:** Plaintiffs file a petition for writ of certiorari.

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<sup>1</sup> *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016).

<sup>2</sup> *June Med. Servs. LLC v. Kliebert*, 158 F. Supp. 3d 473 (M.D. La. 2016).

<sup>3</sup> *June Med. Servs., L.L.C. v. Gee*, 136 S. Ct. 1354 (2016) (Mem.).

<sup>4</sup> *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016).

<sup>5</sup> *June Med. Servs. LLC v. Kliebert*, 250 F. Supp. 3d 27 (M.D. La. 2017).

<sup>6</sup> *June Med. Servs. L.L.C. v. Gee*, 905 F.3d 787 (5th Cir. 2018).

<sup>7</sup> *June Med. Servs., L.L.C. v. Gee*, 913 F.3d 573 (5th Cir. 2019) (denying rehearing en banc by a 9-6 vote).

<sup>8</sup> *June Med. Servs., L.L.C. v. Gee*, 139 S. Ct. 663 (2019) (Mem.) (granting the emergency stay by a 5-Justice vote in favor that included Chief Justice Roberts and over a dissent by Justice Kavanaugh).



- **May 20, 2019:** Defendants file a conditional cross-petition for a writ of certiorari.
- **October 4, 2019:** U.S. Supreme Court grants both the Petition for Certiorari and the Cross-Petition.<sup>9</sup>

### Case Summary

On **August 22, 2014**, the Center for Reproductive Rights filed a lawsuit in the U.S. District Court for the Middle District of Louisiana challenging the admitting-privileges requirement on behalf of Louisiana clinics. Louisiana's admitting-privileges law, Act 620, requires an abortion provider to have admitting privileges at a hospital within 30 miles of where any abortion is performed. Act 620 is substantively identical to H.B.2, the Texas law that was struck down in *Whole Woman's Health*. Violations of Act 620 by a physician are punishable by imprisonment, fines, and civil liability. A clinic that employs an abortion provider without admitting privileges also may lose its license. After filing, the case was placed on hold pending a decision from the Supreme Court in *Whole Woman's Health v. Hellerstedt*. Following the decision in *Whole Woman's Health*, the case was remanded back to the District Court.

On **April 26, 2017**, the District Court struck down the law as unconstitutional under the undue burden standard, as clarified in *Whole Woman's Health*. Specifically, the District Court found that Act 620 does not advance health or safety or ensure that physicians are competent to provide care. The District Court also found that Act 620 would impose significant burdens on abortion access and "cripple women's ability to have an abortion" because Louisiana "would be left with one" abortion provider at one clinic. Women seeking abortions in Louisiana will be left with "fewer physicians," "longer wait times for appointments, increased crowding and increased associated health risks." The State filed an appeal with the U.S. Court of Appeals for the Fifth Circuit.

On **September 26, 2018**, a three-judge panel issued a 2-1 decision upholding the admitting privileges law, reversing the District Court decision, contrary to Supreme Court precedent.

On **February 7, 2019**, the U.S. Supreme Court, by a 5-4 vote, granted Plaintiffs' request for an emergency stay of the Fifth Circuit's decision. Stay temporarily blocked enforcement of Act 620 while the Supreme Court considered whether to review the case.

The Center filed a petition for writ of certiorari on **April 7, 2019**, asking the Supreme Court to summarily reverse the appellate court's decision. Amicus briefs in support of our petition were filed by the American College of Gynecologists and other medical providers and by former federal judges and Department of Justice officials. Louisiana maintains that Act 620 is constitutional and that *Whole Woman's Health* is distinguishable. The State also filed a conditional cross-petition for certiorari on **May 20, 2019**, asking the Supreme Court to review whether Plaintiffs have standing to challenge the admitting-privileges law. On **October 4**, the Supreme Court granted both Plaintiffs' Petition for Certiorari and Louisiana's Cross-Petition.

The Center is lead counsel and represents June Medical Services, and Dr. John Doe 1 and Dr. John Doe 2, physicians who provide abortion care. The Center also litigated *Whole Woman's Health v. Hellerstedt* and was lead counsel in that case, which the Supreme Court decided just three years ago.

To learn more about *June Medical* (2019), go to <https://reproductiverights.org/case/june-medical-services-v-kliebert-ap>.

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<sup>9</sup> *June Med. Serv. LLC v. Gee*, No. 18-1323, 2019 WL 4889929 (U.S. Oct. 4, 2019) (granting petition); *Gee v. June Med. Serv. L.L.C.*, No. 18-1460, 2019 WL 4889928 (U.S. Oct. 4, 2019) (granting conditional cross-petition).