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# JOINT RESOLUTION ON THE EPIDEMIC OF SUBSTANDARD ABORTION PRACTICES AND ABORTION INDUSTRY EFFORTS TO MAINSTREAM DANGEROUS ABORTION FACILITIES

Model Legislation & Policy Guide  
*For the 2017 Legislative Year*



*Accumulating Victories, Building Momentum,  
Advancing a Culture of Life in America*

# INTRODUCTION

In recent decades, Texas has found itself at the forefront of the continuing national debate over abortion. In January 1973, in *Roe v. Wade*, the Supreme Court struck down Texas' prohibition on abortion, unleashing an extreme abortion-on-demand agenda that has claimed more than 56 million children and left millions of American women at the mercy of an under-scrutinized, inadequately regulated, and profit-driven abortion industry. Further, a result of this singularly controversial decision, the Supreme Court superseded the authority of state and federal lawmakers and installed itself as the "National Abortion Control Board," assuming the right to unilaterally determine which much-needed restrictions and regulations on abortion will be permitted.

In June 2016, another Texas abortion law was before the Court in *Whole Woman's Health v. Hellerstedt*.<sup>1</sup> This 2013 Texas law required that abortion facilities comply with the same patient-care standards as other facilities performing invasive, outpatient surgeries and mandated that individual abortion providers maintain hospital admitting privileges to facilitate emergency care and the treatment of post-abortive complications.

Importantly, *Hellerstedt* also presented the Court with the opportunity to strike a decisive blow for women's health and safety and to ensure that abortion providers – who are often more interested in maintaining profitability than in safeguarding women's health and safety – comply with medically endorsed and widely implemented standards of care. Unfortunately, the Court declined this momentous opportunity and instead appeared to adopt the abortion industry's callous and self-serving position that "mere access" to abortion clinics is sufficient to protect maternal health and safety.

In evaluating the potential damage that this decision may inflict on American women, it is important to remember that convicted Philadelphia abortionist Kermit Gosnell provided "mere access" to abortion in a clinic where a woman died because a stretcher could not fit through the hallways, where unsterilized instruments spread infections, and where parts of unborn babies were stored in jars and cat food cans like macabre trophies. Sadly, Gosnell is not an aberration, but the norm in an industry desperate to avoid meaningful regulation and oversight.

In granting women a constitutional right to abortion, the *Roe* Court did not, despite abortion industry claims to the contrary, equate that "right" with the abortion industry's right to be free from appropriate regulation and oversight. Instead, *Roe* specifically found that a state legislature's legitimate interest in regulating abortion "obviously extends at least to [regulating] the performing physician and his staff, to the facilities involved, to the availability of after-care,

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<sup>1</sup> 136 S. Ct. 994 (2016); opinion available at [https://www.supremecourt.gov/opinions/15pdf/15-274\\_p8k0.pdf](https://www.supremecourt.gov/opinions/15pdf/15-274_p8k0.pdf) (last visited Oct. 13, 2016).

and to adequate provision for any complication or emergency that may arise.”<sup>2</sup> Since *Planned Parenthood v. Casey*,<sup>3</sup> the Supreme Court and other federal and state courts had repeatedly recognized and supported the need for health and safety standards for abortion providers, consistently acknowledging that a state has “a legitimate interest in seeing to it that abortion, like any other medical procedure, is performed under circumstances that ensure maximum safety for the patient.”<sup>4</sup>

The *Hellerstedt* decision stands these precedents on their heads and leaves women subject to the self-serving whims of a profit-driven abortion industry that has been given *carte blanche* to decide which medical standards it will comply with and which it will not. Sadly, the Court failed to unequivocally reaffirm what it had said as far back as *Roe*: states may regulate abortion to protect maternal health.

The abortion right had been defined by the Supreme Court as “the right of the women herself,” not as the “right” of abortion providers to practice without appropriate regulation or oversight, to realize a profit, or to charge a certain fee for their services. The *Hellerstedt* decision suggests that the rights of the abortion providers to turn a profit and remain in business are now, in the Court’s view, paramount to women’s rights to medically competent care and treatment.

Clearly, the *Hellerstedt* decision is troubling for both for American women and for those committed to protecting women from abortion industry abuses. Currently, 29 states regulate (to widely varying degrees) abortion facilities. Further, 15 states require individual abortion providers and/or abortion facilities to maintain either hospital admitting privileges or a transfer agreement with a third-party physician who maintains such privileges.

Many of these protective laws may now be in jeopardy, subject to legal challenges brought by an increasingly predatory abortion industry more motivated by profit margins than by protecting the very women it claims to champion.

In response and building on the legacy of AUL’s groundbreaking, four-part expose of Planned Parenthood, AUL released *Unsafe: How The Public Health Crisis in America’s Abortion Clinics Endangers Women* in December 2016. This new investigative report focuses on the increasingly suspect safety record of America’s abortion industry, including non-Planned Parenthood clinics which are currently performing two-thirds of all abortions.

Evidence collected from 32 states on hundreds of abortion clinics (including Planned Parenthood abortion clinics) and individual abortionists establishes that the practice of abortion in America has devolved into the “red light district” of medicine and is populated by dangerous, substandard providers. *Unsafe* is both a “snapshot” in time, focusing only on abortion practices since 2008,

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<sup>2</sup> *Roe v. Wade*, 410 U.S. 113, 150 (1973).

<sup>3</sup> 505 U.S. 833 (1992) (hereinafter, *Casey*).

<sup>4</sup> *Casey*, 505 U.S. at 847.

and the “tip” of the proverbial iceberg, convincingly demonstrating a nationwide pattern of abuse that characterizes an industry that fights to keep profits high and standards low.

Importantly, even limiting the scope of the investigation to the last eight years, efforts to discern the true state of abortion practice in a number of states was stymied by a dearth of protective laws in a number of states, a lack of reporting in others, and limited public availability of information on abortion providers in still more states. We can easily deduce, therefore, that the epidemic of substandard abortion practice is worse than even *Unsafe* shows.

Moreover, with the Supreme Court’s decision in *Hellerstedt*, prioritizing “mere access” to abortion facilities and abortion industry profitability over women’s health and safety, we can expect the problems may actually get worse. It will certainly get worse unless pro-life Americans and their elected representatives take immediate action to confront and remedy the abortion industry’s dangerous practices and rejection of medically appropriate health and safety standards of patient care.

Inexplicably, in *Whole Woman's Health v. Hellerstedt*, the Supreme Court ignored evidence of substandard abortion practices in America. In response to this tragic result, abortion advocates gleefully claimed it was now “game over” for many abortion-related laws, including health and safety standards, that protect women from abortion industry abuses.

Not content with simply challenging pro-life laws in the courts, abortion advocates are also advancing legislation such as the federal *Women’s Health Protection Act* that would further usurp states’ authority to regulate abortion and invalidate hundreds of protective laws.

Thoughtful, caring Americans will never abandon women to the whims of abortion profiteers. One effective way to express concern is to enact AUL’s *Joint Resolution on the Epidemic of Substandard Abortion Practices and Abortion Industry Efforts to Mainstream Dangerous Abortion Facilities*.

For more information and drafting assistance, please contact AUL’s Legislative Coordinator at (202) 289-1478 or [Legislation@AUL.org](mailto:Legislation@AUL.org).

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# JOINT RESOLUTION ON THE EPIDEMIC OF SUBSTANDARD ABORTION PRACTICES AND ABORTION INDUSTRY EFFORTS TO MAINSTREAM DANGEROUS ABORTION FACILITIES

**JOINT RESOLUTION No.** \_\_\_\_\_  
**By Representatives/Senators** \_\_\_\_\_

WHEREAS, the [*majority*] of all abortions in this State are performed in clinics or facilities devoted primarily to providing abortions and family planning services;

WHEREAS, there are approximately [*Insert number*] abortion clinics or facilities in this State;

WHEREAS, recent [*annual*] inspections of the abortion clinics or facilities in this State have revealed that [*Insert summary of the results of recent inspections, focusing on serious and/or repeated health and safety violations or concerns*];

WHEREAS, [*Insert a summary of any specific recent incident(s) involving dangerous or substandard abortion practices that deserve specific mention*];

[*OPTIONAL: WHEREAS, the full extent of the potentially serious health and safety violations at abortion facilities and clinics within this State is unknown because of a lack of [regular and comprehensive] inspections;*]

[*OPTIONAL: WHEREAS, a recent report issued by Americans United for Life (AUL) has detailed hundreds of incidents in which abortion clinics or facilities and individual abortion providers from across the nation have been cited by state officials for violating health and safety standards and other abortion-related laws, been sued for deficient care, or otherwise been investigated for substandard practices.*]

WHEREAS, these unsafe conditions and practices are evidence of an epidemic of substandard abortion practice in this State [*and across the nation*];

WHEREAS, health and safety violations at abortion clinics and facilities are known to be under-reported because of a lack of comprehensive incident reporting by abortion clinics and facilities, a failure of some states to adequately enforce their abortion laws, and the burden that the current complaint process often places on women—many of whom find telling their abortion stories too difficult;

WHEREAS, the Supreme Court of the United States has specifically acknowledged that the State of [Insert name of State] has “a legitimate interest in seeing to it that abortion, like any other medical procedure, is performed under circumstances that insure maximum safety for the patient. This interest obviously extends at least to the performing physician and his staff, to the facilities involved, to the availability of after-care, and to adequate provision for any complication or emergency that might arise.” *Roe v. Wade*, 410 U.S. 113, 150 (1973).

WHEREAS, the Supreme Court of the United States in *Whole Woman’s Health v. Hellerstedt*, 136 S.Ct. 994 (2016), ignored both the growing evidence of substandard and dangerous abortion practices and its own legal precedents, striking down a Texas law requiring abortion clinics or facilities to meet the same health and safety standards as any facility performing other invasive, outpatient surgical procedures and mandating that individual abortion providers maintain admitting privileges at local hospitals to facilitate both emergency care and the treatment of post-abortive complications;

WHEREAS, in striking down the Texas law, the Supreme Court of the United States superseded the legal authority of state lawmakers, including this [Legislature], and reinforced its self-appointed role as a “National Abortion Control Board,” improperly assuming the unilateral right to decide which restrictions and regulations on abortion will be permitted;

WHEREAS, the Supreme Court of the United States declined an important opportunity in *Whole Woman’s Health v. Hellerstedt* to strike a decisive blow for women’s health and safety and to ensure that abortion providers comply with medically endorsed and widely implemented standards of patient care;

WHEREAS, the Supreme Court of the United States in *Whole Woman’s Health v. Hellerstedt* uncritically adopted the abortion industry’s arguments that mere access to an abortion clinic or facility is sufficient to protect maternal health and safety, and the purely ideological assertion that American women have come to rely on the ready availability of abortion to ensure their positions in society and their legal, social, and financial rights;

WHEREAS, the late Chief Justice of the Supreme Court of the United States William Rehnquist called this “reliance argument” “undeveloped and totally conclusory,” writing “[s]urely it is dubious to suggest that women have reached their ‘places in society’ in reliance upon *Roe*, rather than as a result of their determination to obtain higher education and compete with men in the job market, and of society’s increasing recognition of their ability to fill positions that were previously thought to be reserved only for men.” *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 956-57 (1992);

WHEREAS, the Supreme Court of the United States' decision in *Whole Woman's Health v. Hellerstedt* could jeopardize both the future enactment and the continued enforcement of protective and well-supported abortion laws in the State of [Insert name of State] and in other States;

WHEREAS, the [Insert number] United States Congress has introduced/[has previously introduced] the [federal Women's Health Protection Act], [H.R. \_\_\_\_ /S. \_\_\_\_] which would strip this [Legislature] and legislatures in other States of their ability to enact even minimal legal protections, including health and safety standards for abortion clinics or facilities, for women and their unborn children;

WHEREAS, the [federal Women's Health Protection Act] is strongly supported by [President of the United States; members of the current Administration; members of Congress, and] national and state abortion-advocacy groups;

WHEREAS, the 10th Amendment to the Constitution of the United States provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people";

WHEREAS, the power to determine an individual State's abortion-related laws and policies including the delineation of appropriate medical requirements and standards for its provision has not been delegated in any manner to the federal government;

WHEREAS, beginning with *Roe v. Wade* in 1973, the Supreme Court of the United States has repeatedly recognized the right and authority of the States to regulate the provision of abortion;

WHEREAS, the State of [Insert name of State] and the other States thus retain the authority to regulate the provision of abortion and, in the interest of protecting both women and the unborn, have acted accordingly and appropriately;

WHEREAS, the [federal Women's Health Protection Act] would potentially invalidate hundreds of federal and state abortion-related laws, laws supported by the majority of the American public;

WHEREAS, the [federal Women's Health Protection Act] could specifically invalidate the following commonsense, protective laws duly enacted by the State of [Insert name of State]:

**[Drafter's Note:** *Insert bulleted list of state laws that would be invalidated by the federal Women's Health Protection Act or similar legislation. AUL is available for assistance in compiling a complete list of affected state laws.*]

WHEREAS, the [*federal Women's Health Protection Act*] will protect and promote the abortion industry, sacrifice women and their health to a radical political ideology of unregulated abortion-on-demand, and silence the voices of everyday Americans who want to engage in a meaningful public discussion and debate over the availability, safety, and even desirability of abortion.

NOW, THEREFORE, BE IT RESOLVED BY THE [*LEGISLATURE*] OF THE STATE OF [*INSERT NAME OF STATE*]:

**Section 1.** That the [*Legislature*] condemns the [*substandard*] practices and [*dangerous*] conditions in abortion clinics and facilities in [*Insert name of State*] and across the nation.

**Section 2.** That the [*Legislature*] strongly supports medically appropriate health and safety standards for abortion clinics and facilities and recognizes that it is the responsibility of the [*Legislature*] to regulate the provision of abortion in [*Insert name of State*].

**Section 3.** That the [*Legislature*] strongly disagrees with the decision of the Supreme Court of the United States in *Whole Woman's Health v. Hellerstedt* which may make it more difficult for this [*Legislature*] and those in other States to appropriately regulate the provision of abortion and effectively respond to the national epidemic of [*substandard*] abortion care.

**Section 4.** That the [*Legislature*] is deeply concerned that the Supreme Court of the United States in its decision in *Whole Woman's Health v. Hellerstedt* ignored evidence of [*substandard*] practices and dangerous conditions in abortion clinics and facilities in [*Insert name of State*] and across the nation.

**Section 5.** That the [*Legislature*] strongly opposes [*H.R. \_\_\_\_ /S. \_\_\_\_*], [*the federal Women's Health Protection Act*], and urges the United States Congress to summarily reject it or any similar legislation.

**Section 6.** That the [*Legislature*] strongly opposes the [*federal Women's Health Protection Act*] because it seeks to circumvent the States' general legislative authority as guaranteed by the 10<sup>th</sup> Amendment to the United States Constitution.

**Section 7.** That the [*Legislature*] strongly opposes the [*federal Women's Health Protection Act*] because it seeks to undermine the right and responsibility of the States and the people to debate, vote on, and determine abortion-related laws and policies.

**Section 8.** That the [*Legislature*] strongly opposes the [*federal Women's Health Protection Act*] because the protection of women's health through state regulations and limitations on abortion is a compelling state interest that should not be nullified or limited by Congress.

**Section 9.** That the [*Legislature*] strongly opposes the [*federal Women's Health Protection Act*] because its enactment would potentially nullify [*Insert appropriate number*] laws in the State of [*Insert name of State*], laws that the [*Legislature*] and the people of [*Insert name of State*] strongly support.

**Section 10.** That the Secretary of State of [*Insert name of State*] transmit a copy of this resolution to the Governor, to the President of the United States, and to the President of the Senate and the Speaker of the House of Representatives of the United States Congress.

More detailed information about the need and justification for laws for legislative action condemning the epidemic of substandard practices and conditions in American abortion clinics can be found at [www.AUL/Unsafe.org](http://www.AUL/Unsafe.org) and in AUL's annual publication *Defending Life*.

*Defending Life* is available online at [AUL.org](http://AUL.org).

For further information regarding this or other AUL policy guides, please contact:

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