



When It Comes to Your Health, Whose Judgment Do You Trust?

By Maggie Jo Buchanan

June 13, 2016

Politicians have shown little hesitation in overriding medical judgment when it comes to abortion care, as evidenced by the increasing number of anti-science laws that legislatures have passed over the last several years. The dangerous, and inevitably extreme, articulation of this trend is clearly expressed in one question the U.S. Supreme Court is currently considering in *Whole Woman's Health v. Hellerstedt*. The rapid politicizing of health care over the last few years is demonstrated perhaps most clearly in interference with gun safety counseling and the debate over health care reform. Such a slippery slope will likely not be restricted to women's health. The rise in anti-science laws will ensure that—as is already too often the case with abortion—only a wealthy few will be able to access comprehensive, safe health care. The Court must rule on the side of medicine in *Whole Woman's Health* to safeguard reproductive rights, but state and federal legislatures must also act to ensure all areas of health care are free from unnecessary, and even dangerous, governmental interference.

When opponents of abortion care reject medical judgment

Politicians are usurping a physician's medical judgment for their own ideological judgment. States continue to meddle in abortion care even though access to abortion is considered “an essential component of women's health” by the American Congress of Obstetricians and Gynecologists, or ACOG.¹ In order to punish and judge women who choose abortion care, politicians have inserted themselves in the doctor-patient decision process in ways that are largely unheard of in any other branch of medicine. A doctor's focus must be on the patient's health no matter the circumstances, but these providers are currently forced to navigate unnecessary and even unsafe political requirements that are not grounded in science.

In March, the U.S. Supreme Court heard oral arguments in the case commonly referred to as *Whole Woman's Health*. In that case, a medical clinic is challenging two provisions of Texas law: a requirement that all abortion providers have admitting privileges at nearby hospitals and a requirement that all clinics providing abortion care adhere

to specialized building standards meant for a different type of clinic.² The purported argument for these regulations is that they protect women’s health.³ Both the American Medical Association, or AMA, and ACOG deny this claim and oppose the restrictions as unnecessary and even dangerous.⁴

No hospital is under a requirement to grant admitting privileges to any doctor—and many may refuse to do so because of political fears. Moreover, a provider’s lack of admitting privileges does not shut down any avenues for care for a patient; any hospital would see a person in need of medical attention, whether or not that patient’s previous provider is affiliated with that particular hospital.⁵ Notably, there is nothing in the law that would prohibit an abortion provider from continuing to practice any other branch of medicine for which they are licensed without these privileges—the provider just cannot administer abortion care.

Likewise, the specialized building standards required under the Texas law are not only unnecessary but also expensive.⁶ Both provisions work to limit the number of people eligible to provide care and the number of places that care can be provided.

Unfortunately, Texas is not an anomaly. Too many politicians and people believe they have the right to judge women who decide to end a pregnancy. No one can know every woman’s personal situation or circumstances; yet, governmental interference in the safe practice of abortion care has become the norm. Patient privacy and safety, as well as the patient-provider relationship, have all been eroded by policymakers working to advance their political ideology. The Missouri legislature recently demanded providers turn over patient records to legislators, and a majority of states force women who choose to end their pregnancies to unnecessarily disclose personal information.⁷ Utah recently passed a law that forces women to pay for unnecessary general anesthesia when accessing certain abortion care.⁸ Many state legislatures require that doctors tell scientifically incorrect information to their patients.⁹ Some states have even dictated how medication abortion can be administered. Furthermore the states’ way of administering abortion medication poses more risks than the best-evidence method physicians developed.¹⁰

In the 1992 case *Planned Parenthood v. Casey*, the U.S. Supreme Court opened the floodgates for these types of intrusions in setting what is referred to the “undue burden” standard to evaluate the constitutionality of abortion restrictions.¹¹ Under the “undue burden” framework, a state can set “reasonable” laws regulating abortion as long as those laws do not place an undue burden to accessing care.¹² According to the ruling, an undue burden “exists if a regulation’s ‘purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before viability.’”¹³ In further explaining how this standard could be applied, the Court stated: “As with any medical procedure,” states could set standards to “further” the health and safety of a woman.¹⁴ But states cannot dictate “unnecessary health regulations that present a substantial obstacle” to ending a pregnancy.¹⁵

Courts have struggled to apply this standard when states invoke “protecting women’s health” as a justification for abortion restrictions.¹⁶ *Whole Woman’s Health*, the case pending before the Court now, shows the natural—and extreme—extension of such confusion.

Whole Woman’s Health and a national standard for government interference

Government interference in abortion has clear negative effects on women’s health. Shutting down access to abortion care will—as already has been documented in Texas—lead to an increase in illegal abortion and the number of desperate measures women will be willing to take to end a pregnancy.¹⁷ Those most affected by these, and similar, restrictions are those women who cannot afford the expense of traveling great distances, finding child care, and taking time off work in order to simply access care.¹⁸

Former Texas Lt. Gov. David Dewhurst (R) would likely, albeit begrudgingly, agree with the American Medical Association, or AMA, and ACOG’s assessment of the law’s failure to advance patient health.¹⁹ Soon after the law in question in *Whole Woman’s Health* passed, Lt. Gov. Dewhurst—then in office—tweeted out a picture of a map of Texas showing all of the clinics in the state that would likely close because of the new law. According to Lt. Gov. Dewhurst’s tweet, “this is why” he fought so hard to get the restrictions into law.²⁰

It is perhaps to be expected, then, that the U.S. Supreme Court must decide the following question in *Whole Women’s Health*: Are laws that significantly restrict the availability of abortion care “while failing to advance the State’s interest in promoting health—or any other valid interest” constitutional?²¹

Regardless of their different beliefs, both supporters and opponents of reproductive rights acknowledge that abortion is a polarizing topic that prompts deep questions on autonomy, life, and respect—no matter that either side of the debate would define these terms quite differently. But these are questions of personal belief and political ideology, not of medical expertise that advances patient health and safety.

Because *Whole Woman’s Health* will be decided with eight justices as opposed to nine, it is very possible the case could be held over until next term or could end in deadlock. A deadlocked decision would mean the provisions would go into effect in Texas but would not be considered constitutional on a national scale.²² However, as legislatures across the country are enacting laws similar to Texas’, the Court will not be able to avoid answering this question, or one very similar, for long.²³

If the Court were to rule on *Whole Woman's Health* in the affirmative, a politician's judgment would be cemented as a higher authority than medical opinion and expertise for abortion care, which is a constitutionally protected right. If health and safety falls by the wayside in a decision where political ideology supplants medical judgment, there will be little to stop politicians from interfering in other medical decisions.

The growing role of political blockades in medicine

This theoretical slippery slope is not inconceivable—politicians are increasingly acting to interfere in medical practices while also working to block access to care. And as with abortion care, while higher-income families are largely able to escape the harms of this interference, most American families suffer.

For example, there has been an uptick in legislation to institute gag orders on medical providers to stop them from speaking with their patients about gun safety.²⁴ At least one of these bills has become law.²⁵ This interference is vigorously opposed by organizations such as the American Academy of Pediatrics, or AAP, as well as the broader medical community.²⁶ In contrast to the politically motivated mandated counseling containing inaccurate and misleading information in the abortion context, gun safety counseling is, according to the American Academy of Pediatrics a “standard of medical practice.”²⁷ In fact, gun safety counseling has been shown to reduce the number of gun-related injuries, which not only protects families but could also save health care costs.²⁸ The disproportionate consequences of such interference may be clear in light of the fact that the burden of gun violence falls disproportionately on communities of color.²⁹ But, despite medical opinion and clear benefits to the health and safety of families, legislatures act to restrict the ability for this counseling to be given at all.

Some politicians, however, are not satisfied with just interfering in the relationship an individual has with her or his doctor; they are also willing to shut down access to care altogether to advance a political agenda. Over the last several years, many lawmakers have expressed their resistance to the Affordable Care Act, or ACA, by nearly continuously voting to strip health insurance from working families and withhold coverage altogether from citizens with limited means—despite the objections of health care providers.³⁰

Therefore, the detrimental role politics can play in health care standards is not restricted to women's health. In the case of abortion care and the above examples, it is clear that such interference often flouts good medicine to the detriment of families. These types of intrusions are unacceptable.

Protecting health in health care

Sound medical judgment and expertise leads to good standards for patient health and safety. As *Casey* recognizes, while a state can and should act in ways that can advance health, the government must not be allowed to interfere in medicine to the point of overriding medical judgment in a way that harms patient health and safety. In order to support reproductive rights and justice, the Court must prohibit a state's ability to institute blockades to abortion care that fail to promote women's health within case law related to abortion. But even if the Court sides on the best interest of patients' health and safety, more action is necessary.

State legislatures all over the country are judging and punishing women who choose abortion care by restricting their doctors' abilities to practice good medicine and use their expertise. But abortion is not the only medical procedure that stirs deep passions—nor is it the only part of health care that has experienced a surge of undue governmental influence in recent years.

Politicians are not qualified to interfere in anyone's relationship with their trusted medical provider. When it comes to patient health and safety, policymakers must listen to medical expertise and judgment in crafting health-related legislation. Politicians should not impose their extreme political beliefs and get in between a woman and her doctor—government interference that hurts the health and safety of patients in any setting, including abortion care, must be prohibited. If politicians continue to be allowed to place medically unnecessary restrictions on abortion, there is nothing to stop them from interfering in other medical decisions as well.

Maggie Jo Buchanan is the Associate Director of the Women's Health and Rights Program at American Progress.

Endnotes

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