June Medical Services LLC v. Russo

Supreme Court of the United States, 2020.
2020 U.S. LEXIS 3516 (U.S. June 29,2009)

In this case, striking down Louisiana abortion restrictions essentially identical to Texas restrictions the Court had invalidated only four years earlier in *Whole Woman's Health v. Hellerstedt*, 579 U. S. ___, 136 S. Ct. 2292 (2016), Chief Justice Roberts' concurring opinion evokes many of the prudential principles that informed Justice Gibbs' opinion in the *Second Senators' Case*. Both Justices were in the minority in the previous decision, and both changed their vote (while continuing to think the prior case wrongly decided) in order to preserve the legitimacy of the highest court's determinations. Justice Gibbs' opinion explicitly links the second challenge to the appointment of a new Justice expected to align with the dissenters in the first case; Chief Justice Roberts may not have found it necessary to articulate what readers of his decision would undoubtedly know: that many expected that the replacement of Justice Kennedy (one of the co-authors of *Casey*) with Justice Kavanaugh would at last produce the five votes needed to overrule not only *Whole Woman's Health*, but also, at least indirectly, *Roe v. Wade*.

■ CHIEF JUSTICE ROBERTS, concurring in the judgment.

In July 2013, Texas enacted a law requiring a physician performing an abortion to have "active admitting privileges at a hospital . . . located not further than 30 miles from the location at which the abortion is performed." Tex. Health & Safety Code Ann. §171.0031(a)(1)(A) (West Cum. Supp. 2019). The law caused the number of facilities providing abortions to drop in half. In *Whole Woman's Health v. Hellerstedt*, 579 U. S. ___, 136 S. Ct. 2292, 195 L. Ed. 2d 665 (2016), the Court concluded that Texas's admitting privileges requirement "places a substantial obstacle in the path of women seeking a previability abortion" and therefore violated the Due Process Clause of the Fourteenth Amendment. [Citations.]

I joined the dissent in *Whole Woman's Health* and continue to believe that the case was wrongly decided. The question today however is not whether *Whole Woman's Health* was right or wrong, but whether to adhere to it in deciding the present case. [Citation.]

Today's case is a challenge from several abortion clinics and providers to a Louisiana law nearly identical to the Texas law struck down four years ago in *Whole Woman's Health*. Just like the Texas law, the Louisiana law requires physicians performing abortions to have "active admitting privileges at a hospital . . . located not further

than thirty miles from the location at which the abortion is performed." La. Rev. Stat. Ann. §40:1061.10(A)(2)(a) (West Cum. Supp. 2020). Following a six-day bench trial, the District Court found that Louisiana's law would "result in a drastic reduction in the number and geographic distribution of abortion providers." *June Medical Services LLC v. Kliebert*, 250 F. Supp. 3d 27, 87 (MD La. 2017). The law would reduce the number of clinics from three to "one, or at most two," and the number of physicians providing abortions from five to "one, or at most two," and "therefore cripple women's ability to have an abortion in Louisiana." [Citation.]

The legal doctrine of *stare decisis* requires us, absent special circumstances, to treat like cases alike. The Louisiana law imposes a burden on access to abortion just as severe as that imposed by the Texas law, for the same reasons. Therefore Louisiana's law cannot stand under our precedents.

I

Stare decisis ("to stand by things decided") is the legal term for fidelity to precedent. Black's Law Dictionary 1696 (11th ed. 2019). It has long been "an established rule to abide by former precedents, where the same points come again in litigation; as well to keep the scale of justice even and steady, and not liable to waver with every new judge's opinion." 1 W. Blackstone, Commentaries on the Laws of England 69 (1765). This principle is grounded in a basic humility that recognizes today's legal issues are often not so different from the questions of yesterday and that we are not the first ones to try to answer them. Because the "private stock of reason . . . in each man is small, . . . individuals would do better to avail themselves of the general bank and capital of nations and of ages." 3 E. Burke, Reflections on the Revolution in France 110 (1790).

Adherence to precedent is necessary to "avoid an arbitrary discretion in the courts." The Federalist No. 78, p. 529 (J. Cooke ed. 1961) (A. Hamilton). The constraint of precedent distinguishes the judicial "method and philosophy from those of the political and legislative process." Jackson, Decisional Law and Stare Decisis, 30 A. B. A. J. 334 (1944).

The doctrine also brings pragmatic benefits. Respect for precedent "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." [Citation.] It is the "means by which we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion." [Citation.] In that way, "stare decisis is an old friend of the common lawyer." Jackson, supra, at 334.

Stare decisis is not an "inexorable command." [Citation.] But for precedent to mean anything, the doctrine must give way only to a rationale that goes beyond whether the case was decided correctly. The Court accordingly considers additional factors before overruling a precedent, such as its adminstrability, its fit with subsequent factual and legal developments, and the reliance interests that the precedent has engendered. [Citation.]

Stare decisis principles also determine how we handle a decision that itself departed from the cases that came before it. In those instances, "[r]emaining true to an 'intrinsically sounder' doctrine established in prior cases better serves the values of *stare decisis* than would following" the recent departure. [Citation.] *Stare decisis* is pragmatic and contextual, not "a mechanical formula of adherence to the latest decision." [Citation.] . . .

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Stare decisis instructs us to treat like cases alike. The result in this case is controlled by our decision four years ago invalidating a nearly identical Texas law. The Louisiana law burdens women seeking previability abortions to the same extent as the Texas law, according to factual findings that are not clearly erroneous. For that reason, I concur in the judgment of the Court that the Louisiana law is unconstitutional.