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I. INTRODUCTION

Newly-enacted Texas abortion legislation, which was to take effect on October 29, 2013, has been challenged by several interest groups, including Planned Parenthood and the ACLU, on the grounds that it places an unconstitutional burden on a woman’s right to obtain an abortion.¹ The legislation, which in relevant part requires that abortion-providing physicians have admitting privileges at a nearby hospital, was ruled unconstitutional by the District Court for the Western District of Texas shortly before it was to take effect.² The case is currently on appeal, and hearings before the Fifth Circuit began in January 2014.³

This Note will assess whether the district court correctly found that the admitting privileges requirement of the Texas legislation was unconstitutional. To do this, the Note will examine the Texas abortion legislation and trace the shifting standard of review for abortion cases in Part II, discuss Planned Parenthood v. Abbott in Part III, analyze whether the court correctly applied the undue burden test to the admitting privileges

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2. See id. at 909.
requirement in Part IV, and conclude with a prediction of the future of the case in Part V.

II. BACKGROUND

In order to investigate the correctness of the district court’s ruling on the unconstitutionality of requiring physicians to have admitting privileges, it is necessary to outline both the substance of the Texas abortion legislation and the relevant United States Supreme Court abortion precedent.

A. The Texas Legislation: House Bill 2

On July 12, 2013, the Texas legislature passed a bill (House Bill 2) that regulates abortion in Texas. Most importantly, the bill requires that a physician performing abortions have admitting privileges at a hospital that provides OB/GYN services and is not more than thirty miles away from the clinic. Additionally, the bill prohibits abortions past twenty weeks after fertilization based on evidence indicating that the unborn is capable of experiencing pain by this point in the pregnancy. House Bill 2 also instructs physicians to follow the FDA-approved method of administering abortion-inducing drugs. The bill contains a broad exception for abortions that are deemed medically necessary to protect the health and life of the mother.

B. The Shifting Standard in Abortion Cases

Since Roe v. Wade, the standard of judicial review in abortion cases has shifted. In Roe, the Supreme Court determined that the implied constitutional right to privacy extended to a woman’s decision to seek an abortion. The Court used a strict scrutiny standard to strike down Texas

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5. Id. § 2; see also TEX. HEALTH & SAFETY CODE ANN. § 171.0031; Abbott, 951 F. Supp. 2d at 897–98.
6. House Bill 2 § 3.
7. Id. This portion of the bill contains a limited exception allowing a physician “to prescribe the dosage recommended in the clinical management guidelines defined by the American Congress of Obstetricians and Gynecologists Practice Bulletin as those guidelines existed on January 1, 2013.” Abbott, 951 F. Supp. 2d at 904 (emphasis omitted).
8. House Bill 2 § 1(a)(4)(B). Additionally, the bill contains a broad severability clause stating that if any part of the statute is found unconstitutional, the non-offending portions are to still take effect. Id. § 1(b).
10. Id. at 154.
legislation which forbade abortions in all cases except when a physician determined that the procedure was necessary to save the mother’s life.11 However, the Court held that a state still has an interest in both protecting the health of the woman and protecting the life of the unborn, and that these interests become increasingly compelling the closer to term the pregnancy is carried.12 The point at which the state’s interests could be sufficiently compelling was specified at the first trimester for the health of the woman and at viability for the life of the unborn.13 Therefore, the Roe Court opted for a strict scrutiny test which balanced the right to abortion against compelling state interests.

City of Akron v. Akron Center for Reproductive Health furthered abortion jurisprudence primarily through Justice O’Connor’s dissenting opinion.14 In her dissent, O’Connor suggested that the Court abandon the strict scrutiny approach which was based around stages of pregnancy and instead adopt an “unduly burdensome” standard.15 The unduly burdensome standard provides that regulation of abortion is not unconstitutional unless it “unduly burdens the right to seek an abortion.”16 An advantage of such a test is that it need not make reference to which trimester of pregnancy the woman is in.17

In the plurality opinion of Planned Parenthood v. Casey, the Supreme Court adopted the undue burden test.18 In adopting such a standard, the Court abandoned the trimester framework of Roe, which was used to forbid any regulation of abortion before viability if it was to protect fetal life, and any regulation before the first trimester of pregnancy if it was to protect women’s health.19 Under the undue burden standard, a state may pursue its legitimate ends of protecting the health of the woman and life of the fetus at any point in the pregnancy, so long as such regulation does not have “the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.”20 However, the Court did uphold Roe’s precedent in that a state may freely regulate and even prohibit

11. Id. at 166; see Elizabeth A. Schneider, Workability of the Undue Burden Test, 66 Temp. L. Rev. 1003, 1029 n.246 (1993) (stating that though Roe does not explicitly announce it is using strict scrutiny, the Court’s reasoning uses all three elements of the strict scrutiny analysis).
13. Id. at 163.
15. See id. at 453 (O’Connor, J., dissenting).
16. Id. (quoting Maher v. Roe, 432 U.S. 464, 473 (1977)).
17. Id.
18. See Casey, 505 U.S. at 876.
19. Id.; see Schneider, supra note 11, at 1006 (discussing the trimester framework of Roe).
20. Casey, 505 U.S. at 877.
abortion after the point of viability so long as a woman may still abort if it is deemed necessary to protect her health or life.21

Courts tasked with applying the undue burden standard generally apply a two-pronged analysis.22 First, the court decides whether the state’s legislation is “a permissible means of serving its legitimate ends” regarding the health and life of the woman and the unborn.23 Then the court must decide whether the purpose or effect of the regulation is to place an undue burden on women seeking previability abortions.24 It is within this framework that the recent case concerning House Bill 2 was decided.

III. PLANNED PARENTHOOD OF GREATER TEXAS SURGICAL HEALTH SERVICES V. ABBOTT

In Planned Parenthood v. Abbott, several abortion providers, including Planned Parenthood, sought to enjoin the State from enforcing certain provisions of House Bill 2 on the basis that the bill’s requirements place an unconstitutional restriction on a woman’s right to obtain an abortion.25 The provisions contested were the hospital admitting privileges requirement and the requirement that in cases of medication abortion, physicians follow the

21. Id. at 879; see also Stenberg v. Carhart, 530 U.S. 914, 938 (2000) (holding that any ban on abortion procedures must contain a health exception when that procedure is necessary “for the preservation of the life or health of the mother”). But see Gonzales v. Carhart, 550 U.S. 124, 166–67 (2007) (holding that when it is medically uncertain whether a proscribed abortion procedure is safer for the mother than available alternatives, a health exception need not exist).

22. See, e.g., Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott, 951 F. Supp. 2d 891, 898–99 (W.D. Tex. 2013); see also Gonzales, 550 U.S. at 158 (“Where it has a rational basis to act, and it does not impose an undue burden, the State may use its regulatory power . . . in furtherance of its legitimate interests in regulating the medical profession in order to promote respect for life, including life of the unborn.” (emphasis added)).

23. Case, 505 U.S. at 877. Justice Scalia’s dissent in Casey criticizes the Court’s confusing mix of the undue burden standard and the rational basis test. See id. at 986 n.4 (Scalia, J., dissenting).

24. Id. at 877; see also Gonzales, 550 U.S. at 161 (applying the undue burden test to legislation after determining that the legislation furthered a legitimate government interest).

FDA-approved method of administering the drugs. Judge Yeakel of the District Court for the Western District of Texas ruled that the admitting privileges provision places an unconstitutional restriction on a woman’s right to obtain an abortion, and that the regulations on medication abortion are unconstitutional if there is no exception contained for situations when violating the regulation is necessary for the protection of the life and health of the mother.

The court listed three guiding principles by which it measured the constitutionality of the abortion regulations: 1) before viability, a woman has the right to terminate her pregnancy; 2) a law which, though furthering a State’s legitimate interest, places an undue burden on a woman’s right to obtain an abortion before viability is unconstitutional; and 3) after viability, a state may regulate or proscribe abortion except when necessary to protect the life or health of the mother. Under the guidance of these principles, the court proceeded with a two-pronged, “undue burden” inquiry. First, the court applied a rational-basis test to determine whether the provision’s purpose or effect is rationally related to the State’s legitimate interest in protecting the health and life of the woman or unborn. Next, the court decided whether the provision places an undue burden on women seeking previability abortions.

Running the admitting privileges provision of the bill through this framework, the court found that the regulation was without a rational basis. Initially, the court looked at the State’s arguments in support of the provision. The State primarily argues that the admitting privileges requirement furthers health and safety in two respects: first, the State alleges that such a requirement serves as a “quality-control mechanism” because a hospital would be unlikely to grant admitting privileges to disreputable or incompetent physicians; second, the State argues that admitting privileges ensure a “continuity of care” between an abortion clinic and a hospital, both ensuring that an OB/GYN will be available at the hospital and helping combat miscommunication between the clinic and the hospital should a patient have to be transferred or admitted due to

26. Id. at 895–96.
27. Id. at 909.
28. Id. at 896 (citing Stenberg v. Carhart, 530 U.S. 914, 921 (2000)).
29. Id. at 898.
30. Id. at 898–900.
31. Id. at 900–01.
32. Id. at 898–900.
33. Id.
complications. The State further argues that admitting privileges “address issues of patient abandonment, hospital costs, and accountability,” as well as improve treatment once at the hospital.

In response to the “continuity of care” argument, the court found that the State failed to offer evidence of a communication problem between abortion providers and hospitals or of a correlation between admitting privileges and improving communications with hospitals. The court went on to say that whether admitting privileges exist between an abortion physician and a hospital makes no difference to whether the patient at the hospital will be admitted given that a hospital cannot refuse to provide emergency care. Finally, the court said that admitting privileges have nothing to do with the quality of care provided in an emergency room to a patient.

With respect to the issues of abandonment, costs, and accountability, the court said that there was no evidence that these concerns would be alleviated by requiring admitting privileges. Finally, in response to the argument for improved patient care once in the hospital, the court considered the testimony of an emergency room physician who stated that she would provide the same level of care to patients whether their physician had admitting privileges or not. Without addressing the State’s arguments for quality control and ensuring on-call OB/GYNs, the court concluded that the admitting privileges requirement had no rational relationship to legitimate State interests.

Despite finding no rational basis, the court still assessed whether the admitting privileges requirement placed an undue burden on a woman seeking a previability abortion. Shifting the burden from the State to the plaintiff, the court concluded that Planned Parenthood had established that the provision does place an undue burden on women. The court noted that requiring admitting privileges would cause the closure of a number of abortion clinics due to a lack of physicians with admitting privileges. Further, the court noted that these physicians would be unlikely to obtain

35. Id. The State argues that because not all hospitals have OB/GYNs on call, the requirement will ensure that at least one OB/GYN, the physician who performed the abortion, will be available to treat any complications arising from the abortion. Id.
37. Id. at 899–900.
38. Id. (citing 42 U.S.C. § 1395dd (2012)).
39. Id. at 900.
40. Id.
41. Id.
42. Id.
43. Id.
44. Id. (citing Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 878 (1992)).
45. Id.
privileges due to differing and possibly exacting hospital requirements for granting such privileges.\textsuperscript{46} Finally, the State’s reply that the abortion clinics could recruit physicians who already have admitting privileges was rejected both because many of these physicians’ contracts bar them from “moonlighting” abortion services and because many of these physicians refuse to perform abortions for personal reasons.\textsuperscript{47} Based on the inevitable closure of certain abortion facilities and the possible difficulty in obtaining privileged physicians, the court concluded that the provision created an undue burden and ultimately enjoined its enforcement.\textsuperscript{48}

IV. ANALYSIS OF THE ABBOTT RATIONALE

A. Does the Admitting Privileges Requirement Have a Rational Basis?

The district court found that the admitting privileges requirement was not rationally related to a legitimate state interest.\textsuperscript{49} The rational basis test is the lowest standard of constitutional review, and typically substantial deference is given to a state’s rationale for legislation, the burden being on the challenger to show no rational relation between the legislation and the asserted interest.\textsuperscript{50} In the abortion context, however, the proper application of the rational basis prong of the undue burden test has caused some confusion.\textsuperscript{51} This confusion is arguably a result of the Casey court’s conflation of the rational basis test and the undue burden test.\textsuperscript{52}

\textsuperscript{46} Id. at 900–01.

\textsuperscript{47} Id. at 901.

\textsuperscript{48} Id. at 901, 909.

\textsuperscript{49} Id. at 900.

\textsuperscript{50} See, e.g., Heller v. Doe, 509 U.S. 312, 333 (1993) (“It could be that ‘[t]he assumptions underlying these rationales [are] erroneous, but the very fact that they are ‘arguable’ is sufficient, on rational-basis review, to ‘immunize’ the [legislative] choice from constitutional challenge.’” (quoting F.C.C. v. Beach Commc’n’s, Inc., 508 U.S. 307, 320 (1993))).

\textsuperscript{51} See Emma Freeman, Note, Giving Casey Its Bite Back: The Role of Rational Basis Review in Undue Burden Analysis, 48 HARV. C.R.-C.L. L. REV. 279, 300 (2013) (discussing the confusing relationship between rational basis and undue burden, arguing that a ‘rational basis with bite’ standard was intended in Casey); Gonzales v. Carhart, 550 U.S. 124, 156–60 (2007) (deferring to the state’s stated purpose and legislative findings concerning abortion regulation when finding that an abortion regulation had a rational basis).

\textsuperscript{52} See Casey, 505 U.S. at 986 n.4 (Scalia, J., dissenting); see also Freeman, supra note 51, at 293–94 (noting that due to the language of Casey, disagreement exists as to whether the undue burden test employs intermediate scrutiny or merely a rational basis test.).
Despite the confusion, what is clear is that the district court not only placed the burden on the State to establish that a rational relationship existed between admitting privileges and protecting the life and health of the mother, but also failed to address some of the State’s more compelling arguments regarding this relationship. The State’s argument for quality control has significant weight, especially after stories of unsanitary abortion clinics with malpracticing physicians such as Kermit Gosnell come to light. In cases such as Gosnell’s, holding a medical degree has not been enough to ensure the quality and safety of abortion clinics. It is not hard to see why a state would want to impose further regulations on physicians to help combat such situations. Furthermore, a rational relationship can be drawn between this goal and requiring physicians to have admitting privileges: hospitals will likely hesitate to grant admitting privileges to physicians who have poor reputations or substandard practices. Planned Parenthood rightly notes that admitting privileges, however, are not always granted solely on reputation and quality of service, for example, sometimes hospitals require a physician to admit a certain number of patients per year. But while it may be argued that requiring hospital admitting privileges is not the most effective or efficient way to ensure the

53. See discussion supra Part III.
55. See State Defendants’ Trial Brief, supra note 34, at 34 (citing several instances of licensed physicians being convicted for murder or manslaughter as the result of improper abortion services).
56. See Gonzales, 550 U.S. at 157 (“There can be no doubt the government ‘has an interest in protecting the integrity and ethics of the medical profession.’” (quoting Washington v. Glucksberg, 521 U.S. 702, 731 (1997))).
57. For instance, obtaining admitting privileges at Houston Methodist Hospital requires “verification of education, training, board certification, valid licensure, [and an] explanation of any malpractice claim history . . . to assure that any patient will receive the highest level of care.” Veronica Zaragovia, What It Takes for Texas Abortion Doctors to Get Admitting Privileges, KUT (Feb. 19, 2014), http://kut.org/post/what-it-takes-texas-abortion-doctors-get-admitting-privileges.
quality and safety of abortion clinics, such a consideration is not relevant to a rational basis review.\textsuperscript{50}

The court also failed to respond to the State’s argument that the provision would ensure an on-call OB/GYN at a nearby hospital in case of patient complications. Just as with quality control, here a rational line of thought can be drawn between the legislation and the State’s interest in protecting the health of a woman: not all hospitals have OB/GYNs on call. The statute will ensure that at least one hospital within thirty miles of a clinic will have an OB/GYN on call. This could subsequently help protect the health of a woman who requires hospitalization after an abortion procedure. Given that the court did not explicitly address these arguments, and that these arguments do establish a line of reasoning between the legislation and the statute, the district court’s finding of no rational basis was likely in error.\textsuperscript{61}

B. Does the Admitting Privileges Requirement Create an Undue Burden?

Just because a rational basis can be shown does not mean that abortion legislation is constitutional; the legislation also must not create an undue burden on the right to previability abortion.\textsuperscript{62} The question therefore becomes whether the purpose or effect of the admitting privileges requirement is to create a substantial obstacle for a woman seeking an abortion. The district court ruled that such an undue burden is created by the statute because certain clinics would close due to a lack of physicians with admitting privileges.\textsuperscript{63} The inquiry must turn to whether the district court correctly found that the closure of Texas clinics as a result of the requirement creates an undue burden.

There are two interrelated burdens created by the admitting privileges requirement. The first is the closure of some of the State’s abortion clinics. The second is the resulting burden of traveling to another clinic that has not been shut down. Several federal court cases have found that regulation which would cause a large percentage of the state’s abortion clinics to close is itself an undue burden.\textsuperscript{64} Planned Parenthood estimates that House Bill 2


\textsuperscript{51} See Greenville Women’s Clinic v. Comm’r, S. Carolina Dep’t of Health & Envtl. Control, 317 F.3d 357, 363 (4th Cir. 2002) (stating that requiring physicians to have admitting privileges is “obviously beneficial to patients”).

\textsuperscript{52} See supra notes 18–21 and accompanying text.

\textsuperscript{53} See supra notes 43–48 and accompanying text.

\textsuperscript{54} See, e.g., Okpalobi v. Foster, 190 F.3d 337, 357 (5th Cir. 1999) (holding that legislation which would cause 80% of a state’s abortion clinics to close creates an undue burden); Planned Parenthood Sc., Inc. v. Bentley, 951 F. Supp. 2d 1280, 1288 (M.D. Ala. 2013) (granting an
will cause around one-third of the State’s abortion clinics to close.\textsuperscript{65} However, this amount is substantially less than the closure rates of between 50% and 100% contemplated by those courts that found clinic closure to create an undue burden.\textsuperscript{66} Given that a majority of Texas’s abortion clinics are likely to, and have, stayed open, it is unlikely that a 33% closure rate itself creates an undue burden.\textsuperscript{67}

However, those affected by the closure of abortion clinics will face the burden of traveling to another clinic. In \textit{Casey}, the Supreme Court did not find the extra travel created by a 24-hour waiting period to be an undue burden, even when such travel would cause delay of “much more than a day.”\textsuperscript{68} Lower courts which have explicitly considered the issue of travel distance have established two guiding principles: 1) requiring a woman to travel to another state to obtain an abortion is an undue burden;\textsuperscript{69} and 2) requiring a woman to travel a reasonable distance within a state is not an undue burden.\textsuperscript{70}

Here, Planned Parenthood suggests that one in twelve women will have to travel over 100 miles to receive an abortion, and that women seeking abortions after sixteen weeks of pregnancy may have to travel over 400 miles to an operating clinic.\textsuperscript{71} Because a majority of Texas clinics will

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  \item injunction when a majority of the state’s abortion clinics would be forced to close; Jackson Women’s Health Org. v. Currier, 940 F. Supp. 2d 416, 422–23 (S.D. Miss. 2013) (granting an injunction when the state’s only abortion clinic would be forced to close).
  \item Plaintiffs’ Motion for Preliminary Injunction and Memorandum of Law in Support Thereof, supra note 59, at 2.
  \item See cases cited supra note 64.
  \item \textit{Casey}, 505 U.S. at 885–86 (”[B]ecause of the distances many women must travel to reach an abortion provider, the practical effect will often be a delay of much more than a day. . . . [Consequently], for those women who have the fewest financial resources [and] those who must travel long distances . . . , the 24-hour waiting period will be ‘particularly burdensome.’ [These findings] do not demonstrate that the waiting period constitutes an undue burden.”).
  \item \textit{Currier}, 940 F. Supp. 2d at 422–24 (granting a preliminary injunction against enforcement of legislation which would close the only abortion clinic in the state, forcing women to travel to another state to obtain an abortion).
  \item See, e.g., Women’s Med. Pro’l Corp. v. Baird, 438 F.3d 595, 605 (6th Cir. 2006) (finding that the closure of a clinic when other clinics forty-five to fifty-five miles away remained operational was not an undue burden); Greenville Women’s Clinic v. Bryant, 222 F.3d 157, 165, 172 (4th Cir. 2000) (upholding legislation that would close some abortion clinics, causing women to have to travel seventy miles to an operating clinic). \textit{But see Bentley}, 951 F. Supp. 2d at 1286 (stating that women having to travel 200 miles to a clinic is a substantial encumbrance).
  \item Plaintiffs’ Motion for Preliminary Injunction and Memorandum of Law in Support Thereof, supra note 59, at 9; Plaintiffs’ Reply Brief in Further Support of their Motion for Preliminary and Permanent Injunction at 20, Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott, 951 F. Supp. 2d 891 (W.D. Tex. 2013), ECF No. 74 (stating that the provision
remain open, the legislation will not place on women the burden of requiring them to seek abortion in another state. Further, a travel distance of 100 miles is extremely unlikely to establish an undue burden under Casey precedent—which contemplates multiple-day travel burdens—and is only thirty miles more than the travel distance upheld in the Fourth Circuit. That being said, travel of over 400 miles is a closer call. It could be argued that such a distance is not reasonable, and therefore an undue burden, under lower court precedent. However, the binding precedent of Casey casts doubt on this: the 400-mile burden can easily be compared with the added costs and multiple-day delays caused by traveling in Casey. That travel to an abortion clinic may ultimately make abortions more costly or difficult to obtain for certain women is not by itself enough to be a substantial burden. Therefore, under Supreme Court precedent, a particular travel burden such as this is likely not a substantial obstacle. Based on the foregoing, the district court likely erred in concluding that the admitting privileges requirement of House Bill 2 places an undue burden on women seeking abortions.

V. CONCLUSION

Though abortion remains a convoluted area of constitutional law, principles established through Supreme Court precedent, as well as policy concerns, compel a reversal of the district court’s decision. Requiring abortion physicians to have admitting privileges both ensures the health and safety of women seeking abortions and preserves the integrity of the medical profession. Additionally, the burdens associated with enforcement of such a regulation do not place a substantial obstacle in the path of women seeking previability abortions. The Fifth Circuit has already provided a glimpse of the future of the case by granting the State a stay will cause two of the state’s six post-sixteen-week clinics to close, causing women in Amarillo to travel 350 miles and women in Lubbock to travel 438 miles to obtain these services).

72. See Lindell, supra note 67.
73. See cases cited supra note 70.
74. This 400-mile burden is twice as far as the 200-mile burden created by a closure of a majority of Alabama’s abortion clinics, a distance which an Alabama district court found to create a substantial obstacle. See Bentley, 951 F. Supp. 2d at 1286. But see Fargo Women’s Health Org. v. Schaefer, 18 F.3d 526, 533 (8th Cir. 1994) (“We do not believe . . . a single trip, whatever the distance to the medical facility, create[s] an undue burden.”).
76. Id. at 874 (“The fact that a law which serves a valid purpose, one not designed to strike at the right itself, has the incidental effect of making it more difficult or more expensive to procure an abortion cannot be enough to invalidate it.”).
77. Id. at 886.
pending appeal of the case, stating that the State has a strong likelihood of success on the merits. The Supreme Court itself has also weighed in, upholding the Fifth Circuit’s decision by denying Planned Parenthood’s application to vacate stay.

Blake Freeny

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78. Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott, 734 F.3d 406, 411 (5th Cir. 2013). Whether the Fifth Circuit will apply Salerno or Casey to the legislation remains to be seen. However, the opinion granting stay found a strong likelihood of success even under the Casey standard. Id. at 414.

79. Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott, 134 S. Ct. 506 (2013) (finding that the Fifth Circuit did not “demonstrably err[ ] in its application of accepted standards” (internal quotation marks removed)).

80. Author’s note: Since the initial publication of this Note, the Fifth Circuit indeed reversed the ruling of the district court. Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott, 748 F.3d 583 (5th Cir. 2014). The Fifth Circuit found that the admitting privileges requirement has a rational basis, stating that “the State’s articulation of rational legislative objectives, which was backed by evidence placed before the state legislature, easily supplied a connection between the admitting-privileges rule and the desirable protection of abortion patients’ health.” Id. at 594. The Fifth Circuit also found that the requirement does not create an undue burden on women seeking abortions, stating that “the regulation will not affect a significant . . . fraction of [women seeking abortions], and it imposes on other women in Texas less of a burden than the waiting-period provision upheld in Casey.” Id. at 600.