

21-463 WHOLE WOMEN'S HEALTH V. JACKSON, JUDGE

DECISION BELOW: 13 F.4th 434

LOWER COURT CASE NUMBER: 21-50792

QUESTION PRESENTED:

The State of Texas adopted a law banning abortions at approximately six weeks of pregnancy, in clear violation of this Court's precedents holding that a State cannot prohibit abortion at a point before viability. To try to insulate this unconstitutional prohibition from a federal challenge, the legislature crafted the law to prohibit government officials from directly enforcing it and instead delegated enforcement to the general public via civil actions that "any person" can file in Texas state court. Petitioners- Texas abortion providers and individuals and organizations that support abortion patients-brought suit in federal court against, among others, the clerks and judges of the courts where enforcement actions can be brought and the Texas attorney general. The district court denied Respondents' motions to dismiss on standing and sovereign-immunity grounds. Although Respondents' appeal is pending in the Fifth Circuit, that Court has now issued an order that effectively forecloses Petitioners' claims against the government officials.

The question presented is whether a State can insulate from federal-court review a law that prohibits the exercise of a constitutional right by delegating to the general public the authority to enforce that prohibition through civil actions.

EXPEDITED BRIEFING.

CERT. GRANTED 10/22/2021