August 22, 2016; Looking at Abortion Law Today

Over the last several weeks, we've reviewed the history of regulating abortions in the United States. We left off with the 1992 U.S. Supreme Court case of *Planned Parenthood v. Casey* in which the Court permitted greater abortion restrictions, even during early stages of pregnancy. Since the *Casey* decision, many states passed tougher abortion laws. As a result, lawsuits challenging the new restrictions spread across the country.

This year, one of these cases, *Whole Woman's Health v. Hellerstedt*, made its way to the U.S. Supreme Court. In *Hellerstedt*, abortion doctors and clinics challenged two provisions in a 2013 Texas abortion law. The first required physicians working in abortion clinics to have admitting privileges at a hospital located within 30 miles of the clinic. Texas justified this requirement saying that it better protected women if an emergency arose because patients could immediately be transported to a nearby hospital. Upon its implementation, 20 of the state's 40 clinics were forced to close.

The second objectionable provision required abortion clinics to meet the minimum standards of ambulatory surgical centers. This means that abortion clinics were required to hire a certain number of registered nurses, employ various supervisors, and to meet certain building requirements, such as the width of hallways. On the average, clinics would need to spend between 1.5 to 3 million dollars to meet these requirements. Further, if fully enforced, the number of clinics would drop from 20 to about 7.

With tensions running high on both sides of this matter, the Supreme Court's decision was much anticipated. The Court released its decision on June 27th, and, for the first time in 24 years, gave clearer guidance of what abortion restrictions were and were not acceptable.

Notably, the Court found both of the Texas' abortion provisions unconstitutional. While acknowledging that under *Roe v. Wade* states have a legitimate interest in ensuring that abortions are performed under safe conditions, the Court reiterated its holding in Casey – if the statute "has the effect of placing a substantial obstacle in the path of a woman's choice [it] cannot be considered a permissible means of serving [the state's] legitimate ends."

Keeping this standard in mind, the Court weighed the two provisions' alleged safety benefits against the burdens they imposed on women's access to early-stage abortions. The Supreme Court determined that neither provision substantially improved patient safety. The Court pointed out that prior to passing the 2013 law, Texas had required abortion clinics to associate themselves with doctors who already had admitting privileges. This arrangement had worked out very well.

As to the surgical-center requirement, the Court again found that regulations existing prior to law's passage did an excellent job of ensuring safe conditions. Also, despite the fact that abortions have a much lower mortality rate than do other types of procedures, such as child-birthing, colonoscopies, and liposuctions, Texas laws do not require clinics offering these other services to meet ambulatory surgical center regulations. Obviously, abortions were being singled out.

The Court concluded that "neither of these provisions offers medical benefits sufficient to justify the burdens upon access that each imposes." Rather, "each constitutes an undue burden on abortion access, and each violates the Federal Constitution." Undoubtedly, many states will need to amend their abortion laws to fall within the designated limits of this important decision.

I'll conclude my abortion series next week with a discussion of Guam's abortion laws and the fascinating history behind them.