SUPREME COURT OF THE UNITED STATES

No. 13A452

PLANNED PARENTHOOD OF GREATER TEXAS SURGICAL HEALTH SERVICES ET AL. *v.* GREGORY ABBOTT, ATTORNEY GENERAL OF TEXAS ET AL.

ON APPLICATION TO VACATE STAY

[November 19, 2013]

The application to vacate the stay entered by the United States Court of Appeals for the Fifth Circuit on October 31, 2013, presented to JUSTICE SCALIA and by him referred to the Court, is denied.

JUSTICE SCALIA, with whom JUSTICE THOMAS and JUSTICE ALITO join, concurring in denial of application to vacate stay.

We may not vacate a stay entered by a court of appeals

when," as here, "that court is proceeding to adjudication on the merits with due expedition," *Doe* v. *Gonzales*, 546 U. S. 1301, 1308 (2005) (GINSBURG, J., in chambers).

When deciding whether to issue a stay, the Fifth Circuit had to consider four factors: (1) whether the State made a strong showing that it was likely to succeed on the merits, (2) whether the State would have been irreparably injured

course, acknowledged that applicants had "made a strong showing that their interests would be harmed" by a stay, but it concluded that "given the State's likely success on the merits, this is not enough, standing alone, to outweigh the other factors." ___ F. 3d ___, ___ 2013 WL 5857853, *9 (CA5, Oct. 31, 2013). The dissent never explains why that conclusion was clearly wrong: In particular, it cites no "'accepted standar[d],'" *Western Airlines*, *supra*, at 1305, requiring a court to delay enforcement of a state law that the court has determined is likely to withstand constitu-

have not carried their heavy burden of showing that doing so was a clear violation of accepted legal standards—which do not include a special "status quo" standard for laws affecting abortion. The Court is correct to deny the application.

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is "without a rational basis and places a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus." Id., at *2; see also Gonzales v. Carhart , 550 U. S. 124, 146 (2007) (A State "may not impose upon this right [to an abortion] an undue burden, which exists if a regulation's 'purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability'" (quoting Casey, supra, at 878)).

The State appealed the District Court's decision and asked the Court of Appeals for the Fifth Circuit to stay the injunction pending resolution of the appeal. The Court of Appeals granted the stay, which had the effect of allowing the admitting privileges requirement to go into force immediately. ___ F. 3d ___, 2013 WL 5857853 (Oct. 31, 2013). In deciding to issue the stay, the Fifth Circuit undertook to apply the traditional analysis, which requires a balancing of four factors: "'(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.'" Nken v. Holder , 556 U. S. 418, 426 (2009) (quoting Hilton v. Braunskill

the injunction meant that abortion clinics in Texas whose physicians do not have admitting privileges at a hospital within 30 miles of the clinic were forced to cease offering abortions. And it means that women who were planning to receive abortions at those clinics were forced to go elsewhere—in some cases 100 miles or more—to obtain a safe abortion, or else not to obtain one at all. The Fifth Circuit set the appeal for expedited consideration, with oral argument to be held in January 2014 and, I assume, a decision to issue soon thereafter. See ibid.

Applicants, the plaintiffs in the District Court, now ask this Court to vacate the Fifth Circuit's stay, meaning that the District Court's injunction would be reinstated and those clinics that were forced to close could reopen while the Fifth Circuit receives briefing and renders its considered decision on the merits.

This Court may vacate a stay entered by a court of appeals where the case "'could and very likely would be reviewed here upon final disposition in the court of appeals,'" "'the rights of the parties . . . may be seriously and irreparably injured by the stay,'" and "'the court of appeals is demonstrably wrong in its application of accepted standards in deciding to issue the stay.'" Western Airlines, Inc.008 Tc 0.071an <</2es223

status quo. By putting Texas' new law into immediate effect, it instantly leaves "24 counties in the Rio Grande Valley . . . with no abortion provider because those providers do not have admitting privileges and are unlikely to get them," 2013 WL 5781583, *5, and it may substantially reduce access to safe abortions elsewhere in Texas. Applicants assert that 20,000 women in Texas will be left without service. While the State denies this assertion, it provides no assurance that a significant number of women seeking abortions will not be affected, and the District Court unquestionably found that "there will be abortion clinics that will close." *Ibid.* The longer a given facility remains closed, the less likely it is ever to reopen even if the admitting privileges requirement is ultimately held unconstitutional.

Third, the Fifth Circuit has agreed to expedite its consideration of the challenge, minimizing the harm that the injunction, if entered in error, would do to the State and bolstering my view that it is a mistake to disrupt the status quo so seriously before the Fifth Circuit has arrived

cuit's ultimate decision.

Sixth , I can find no significant "public interest" considerations beyond those I have already mentioned.

Given these considerations, in my view, the standard governing the Fifth Circuit's decision whether to stay the District Court's injunction was not satisfied, and the standard governing this Court's decision whether to vacate the Fifth Circuit's stay is satisfied. See Nken, 556 U. S., at 426; Western Airlines , supra, at 1305. I would maintain the status quo while the lower courts consider this difficult, sensitive, and controversial legal matter. Thus, I would vacate the stay, and I dissent from the Court's refusal to do so.