

37 F.4th 1098

United States Court of Appeals, Fifth Circuit.

WHOLE WOMAN'S HEALTH; Brookside Women's Medical Center, P.A., doing business as Brookside Women's Health Center and Austin Women's Health Center; Lendol L. Davis, M.D.; Alamo City Surgery Center, P.L.L.C., doing business as Alamo Women's Reproductive Services; Whole Woman's Health Alliance; Dr. Bhavik Kumar, Plaintiffs—Appellees,

v.

Cecile Erwin YOUNG, Executive Commissioner of the Texas Health and Human Services Commission, in her Official Capacity, Defendant—Appellant.

No. 18-50730

FILED June 28, 2022

West Codenotes

Negative Treatment Vacated

Tex. Health & Safety Code Ann. §§ 697.001, 697.002, 697.003, 697.004, 697.007, 697.008, 697.009; 25 Tex. Admin. Code §§ 138.1, 138.2, 138.3, 138.4, 138.5, 138.6, 138.7.

Appeal from the United States District Court for the Western District of Texas, USDC No. 1:16-CV-1300, David A. Ezra, U.S. District Judge

Attorneys and Law Firms

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Before Barksdale, Stewart, and Costa, Circuit Judges.

Opinion

Per Curiam:

***1099** The district court enjoined Texas laws regulating the disposal of embryonic and fetal tissue remains. The state requires facilities performing abortions to dispose of these remains in one of four ways: “(1) interment”; (2) cremation; (3) incineration followed by interment; or (4) steam disinfection followed by interment. TEX. HEALTH & SAFETY CODE § 697.004(a). Ashes resulting from cremation or incineration “may be interred or scattered in any manner as authorized by law for human remains,” but

“may not be placed in a landfill.” *Id.* § 697.004(b).

The district court assumed that the Texas laws further a legitimate state interest. *See Box v. Planned Parenthood of Ind. & Ky., Inc.*, — U.S. —, 139 S. Ct. 1780, 1782, 204 L.Ed.2d 78 (2019) (holding that similar Indiana law was rationally related to a “legitimate interest in proper disposal of fetal remains” (quoting *Akron v. Akron Ctr. for Reprod. Health, Inc.*, 462 U.S. 416, 452 n.45, 103 S.Ct. 2481, 76 L.Ed.2d 687 (1983))). The court then applied the “undue *1100 burden” standard of *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 843, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992) (plurality opinion), *overruled by Dobbs v. Jackson Women's Health Org.*, — U.S. —, 142 S.Ct. 2228, — L.Ed.2d — (June 24, 2022). Under the *Casey* balancing approach, the district court concluded that “the challenged laws impose significant burdens on abortion access that far outweigh the benefits the challenged laws confer.” It thus held that the laws restricting the methods for disposal of fetal

remains violate the Due Process Clause of the Fourteenth Amendment. It went on to hold that the laws also violate the Equal Protection Clause.

Last week, the Supreme Court overruled *Casey* and *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973). *See Dobbs*, 142 S.Ct. at 2284. *Dobbs* holds that “[t]he Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion.” *Id.* Accordingly, we VACATE the injunction issued in this case and REMAND for further proceedings consistent with *Dobbs*.

All Citations

37 F.4th 1098 (Mem)
