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**To Recognize the Tyranny of Distance:  
A Spatial Reading of *Whole Woman's Health v.  
Hellerstedt***

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**Abstract**

Distance—physical, material distance—is an obviously spatial concept, but one rarely engaged by legal or feminist geographers. We take up this oversight in relation to the 2016 U.S. Supreme Court decision in *Whole Woman's Health v. Hellerstedt*, which adjudicated the constitutionality of a Texas law that imposed new regulations on abortion providers. Because half of the state's abortion providers were unable to meet these regulations and thus closed, the distance that many Texas women had to travel for abortion services increased dramatically. In part because of these increases, the Supreme Court ultimately determined that the Texas laws imposed an unconstitutional “undue burden.”

Bringing together case law and ethnographic data, this article traces the process by which distance is made legally “legible” in the context of reproductive in/justice. In so doing, it confronts more uneasy realities of distance, including the discursive dismissal of social and literal im/mobility and isolation; contradictory readings of “emptiness”; and the material

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spatiality of distance through the non/place-ness of rural areas. Together, these factors illuminate a more significant distance, namely the epistemic and social distance that exists between the legal performance of distance in litigation and the embodied traversal of distance by a woman seeking an abortion in Texas. Prioritizing rural distance as material, legal and gendered, our work engages and augments the nascent field of feminist legal geographies. It likewise challenges legal geographers' insistence on urban space by uncovering the ways in which even the relative "emptiness" of distance is intimately consequential.

Finally, this paper makes connections between the exercise of the abortion right and the exercise of other rights that implicate distance, most notably the right to vote. Just as abortion regulations have often had the effect of requiring women to travel farther for abortion services, voter ID laws have the effect of requiring voters to travel to a public agency in order to secure the requisite identity document. Other voting regulations and state and local voting practices may similarly impose spatial burdens on voters. We thus assert that what *Whole Woman's Health* reveals about making distance legally cognizable finds ready legal application in other contexts.

## Introduction

In June, 2016, the U.S. Supreme Court decided the most significant abortion case in nearly a quarter century, *Whole Woman's Health v. Hellerstedt*. In a 5-3 decision, the Court invalidated as unconstitutional two Texas TRAP laws (Targeted Regulation of Abortion Providers) passed in 2013 as part of Texas House Bill 2 (H.B. 2). These regulations required initially that abortion providers have admitting privileges at a hospital within 30 miles of the clinic where abortions are performed, and secondly that abortion clinics meet the extensive and expensive requirements of Ambulatory Surgical Centers (ASC).<sup>1</sup>

While the stated purpose of these TRAP laws was to protect women's health, critics quickly identified this justification as pretextual, and the U.S. Supreme Court ultimately agreed. Also widely recognized was the fact that compliance with the requirements would put many providers out of business and significantly increase the cost of abortion services (Greenhouse and Siegel, 2016). Indeed, when the federal court of appeals initially upheld the Texas admitting privileges requirement in 2014, more than half of the state's 44 abortion providers were unable to comply and forced to close. This left vast areas of the state without access to abortion services. If the ASC

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<sup>1</sup> The ASC requirements included, among others, halls wide enough for two gurneys side by side; a full surgical suite with 240 square feet or more of clear floor area in the operating room; a minimum of 14 feet between built-in cabinets, counters, and shelves; and specific plumbing and heating and cooling system requirements (*Whole Woman's Health*, 2016: 2314).

requirement had gone into effect, the shortage of providers would have become significantly more dire, their spatial concentration more dramatic. The Supreme Court decision prevented that outcome.

From a legal geography standpoint, *Whole Woman's Health* is significant because of the Supreme Court's unprecedented attention to spatiality, specifically to the burden of distance. This case reflects what we identify as a compelling trend: the increasing significance of distance—including distance as a feature of rural life—in litigation regarding the exercise of rights. As we demonstrate here, this judicial recognition of distance as a barrier or burden is worth exploring in and beyond the particular context of *Whole Woman's Health*. We argue that the obstacle of distance, which is not unique to this case or to abortion regulations more generally, implicates more intricate and often “invisible” realities of gender, poverty, rurality, and immigration status, as well as the intersections among these. By grappling with distance in this way, our work contributes to feminist legal geography's understanding of rural spatiality and distance, reproductive justice, and sociospatial and legal im/mobility and in/visibility. It thus also contributes to our understanding of an array of power relations.

In what follows, we introduce our conceptual and methodological approach to distance. We then present a brief history of abortion law in the United States, with a focus on the themes of distance and travel. This is a

prelude to our overview of the *Whole Woman's Health* litigation. We next sketch as theoretical frames the feminist literatures on abortion law and political geography, as well as the legal geography scholarship. We additionally consider how—or if—these and other interdisciplinary literatures recognize *rural* distance, as well as and corollary concepts including emptiness, im/mobility and embodiment. We then return to a more substantive analysis of the Supreme Court's decision, tracing throughout the role of distance in legal and ethnographic interpretations of *Whole Woman's Health*. We also explore how distance became a gateway for surfacing other characteristics and vulnerabilities. Finally, we conclude by summarizing the contributions this study makes to feminist legal geography, as well as the ways in which a more nuanced understanding of rural distance will advance theoretical and applied work amidst new threats to constitutional rights.

**Distance and Method: Reading *Whole Woman's Health v. Hellerstedt***

Among human geographers, distance is variously viewed as a “remnant” of the discipline's positivistic days (Johnston 2009: 169); as rendered “dead” through global communications and information technology (Cairncross, 1997; Grimes, 1999; Halfacree, 1993; Kolko, 2000); as nominally if at all related to subjective experiences of place (Cresswell, 2014); or important inasmuch as it situates an individual's or movement's “location” (Capling and Nossal 2001). Rather than dismiss distance as outmoded or

peripheral, we instead posit it as a timely and compelling locus for social, spatial, and legal experience. Indeed, we suggest that distance ought to be brought “into the theoretical foreground” (Young, 2006: 254) in some spatial analyses.

We thus affirm Dragos Simandan’s call to attend to “the rich concept of distance” (2016: 251) and extend it to the context of feminist legal geography. Through a critical legal and ethnographic reading of distance in *Whole Woman’s Health*, we demonstrate the ways in which distance aptly illuminates—and quite literally spans—embodied, performed, discursive and quantified understandings of law and space. In this way, we not only surface the persistent and multi-faceted “tyranny of distance” (Blainey, 1968), but also establish distance as a particularly dynamic lens through which to view both the topological and relational workings of law.

To meaningfully engage so many interpretations of distance, we offer a necessarily multidisciplinary methodology. In light of what Laura Nader calls the “contemporary cacophony” in law and society scholarship, we firmly acknowledge that legal scholars and social scientists *do different things*: “We have much to learn from each other, but if we try to do each other’s work, the work suffers from our naiveté and inexperience” (2002: 73). Rather than encourage legal geographers to reflexively (but we fear uncritically or inadequately) borrow the methods of other disciplines ad hoc (Braverman,

2014), we believe that rich concepts and complex cases demand rigorous multidisciplinary engagement. This analysis accordingly weaves together Michele Statz's approach as an anthropologist of law and Lisa Pruitt's perspective as a scholar of law and rural livelihoods, as well as feminist legal theory.<sup>2</sup>

Our bringing together distinct and at times disparate methods and perspectives to engage with distance is deliberate. As our data demonstrate, *Whole Woman's Health* exemplifies the timely yet still amorphous space of "feminist legal geography": Depending on one's location, the case is about women's rights, human rights, or states' rights. It is about reproductive rights or reproductive justice; it is political and moral; it is procedural; it involves empathy and autonomy, mobility and infrastructure; it is powerfully entangled with legal status, language, ethnicity and class.

The data we explore include pleadings and briefs the parties filed at each stage of the *Whole Woman's Health* litigation. We also compiled and analyzed media accounts of the case. Finally, in August 2016, Michele Statz traveled to New York to conduct semi-structured interviews with six of the

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<sup>2</sup> Of course, we recognize that legal scholars and ethnographers actually do some things similarly. Both practices interpret and prioritize among competing accounts, and they make visible just as they contain power-filled spaces and omissions. When done well, each instantiates a reality that was there all along (Yngvesson and Coutin 2008; see also Riles 1994).

attorneys who litigated the case.<sup>3</sup> In these conversations, the lawyers discussed case development and strategy, while also initiating broader questions of reproductive rights and justice, professional motivation, and political mobilization. We attribute their candor to Statz's training and experience as a qualitative researcher, as well as to her forthright admission of *not* having a Juris Doctorate (law degree). Had Pruitt conducted these interviews, we suspect our data would be more focused on legal technicalities and procedure, and that the interviews might have been influenced by Pruitt's past legal scholarship on rural women's abortion access.

Holding the ethnographic data Statz collected against Pruitt's analysis of litigation documents and judicial opinions illuminates critical junctures each of us likely would have overlooked on our own. In these junctures, many of our initial questions proved inconsequential. Other details, like the quantification of distance, emerged as not only legally significant but also as profoundly intimate and indicative of the intricacies and intersections of gender, poverty, immigration status, and even seemingly mundane factors such as public transit infrastructure.

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<sup>3</sup> Three of these individuals, including Stephanie Toti, who ultimately argued the case before the U.S. Supreme Court, continue to work at the Center for Reproductive Rights. Two others now work for different advocacy organizations, and a third served on the case pro bono. To maintain confidentiality, we use pseudonyms and do not link interview excerpts with attorneys' affiliated organizations.

## Putting *Whole Woman's Health* in Legal Context

In the U.S. legal system, challenges to the constitutionality of a law are initially made in federal district court, a trial court in which both parties proffer evidence to support their claims. The defendant in such cases is the state that enacted the law, though the named defendant may be a state official; in *Whole Woman's Health*, the defendant, Hellerstedt, was Commissioner of the Texas Department of Health Services.<sup>4</sup> Following an initial ruling, the losing party may appeal to a U.S. Court of Appeals for the relevant region. In *Whole Woman's Health*, that appeal was to the U.S. Court of Appeals for the Fifth Circuit, which includes the states of Texas, Louisiana and Mississippi. There is no appeal as a matter of right from a U.S. Court of Appeal; rather, the U.S. Supreme Court has discretion to choose which cases it will hear. The Court likely agreed to consider *Whole Woman's Health* because of a circuit split—that is, differing rulings among federal courts of appeal—regarding the constitutionality of TRAP regulations similar to those in Texas (Petition for a Writ of Certiorari in *Whole Woman's Health v. Cole*: 15-20 (2015)). The Supreme Court's decision in *Whole Woman's Health* resolved that circuit split, making abortion regulation more uniform across the United States.

Texas abortion providers challenged the TRAP regulations in H.B. 2 in

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<sup>4</sup> When the case was before the federal district court, the defendant was Lakey, and in the Fifth Circuit the defendant was Cole, the two predecessors to Hellerstedt.

consecutive lawsuits. In the first case, the Fifth Circuit Court of Appeals upheld the constitutionality of the admitting privileges requirement (*Planned Parenthood v. Abbott*, 2014). Because many Texas abortion providers were not able to secure admitting privileges, more than half of Texas' abortion clinics closed. Most of the clinics forced to close were in small- and mid-sized cities, including in the Rio Grande Valley (RGV) and in sparsely populated West Texas, thus leaving women in those regions particularly poorly served.

At stake in the constitutional challenge to the second requirement was a further dramatic reduction in abortion availability in Texas. If the ASC requirement were upheld—as it initially was by the Fifth Circuit Court of Appeals—the number of abortion providers in Texas would have fallen to just six or seven to serve the state's 5.4 million reproductive age women (*Whole Woman's Health v. Hellerstedt*, 2016: 2301). Moreover, all remaining providers would have been located in four major metropolitan areas in the eastern and northern parts of the state: Dallas-Fort Worth, Austin, San Antonio, and Houston. Massive parts of Texas—the second largest in both population and land area among U.S. states (U.S. Census Bureau)—would have been left without abortion services.

Spatiality and distance were differently understood, alternatively foregrounded or dismissed, as the *Whole Woman's Health* case rose through

the courts. The spatial implications of the Texas law were readily apparent and easily accommodated by the relevant legal test: Did the Texas law impose an “undue burden” on the right to an abortion? At trial, the Center for Reproductive Rights, as plaintiffs’ counsel, laid a strong factual foundation regarding spatiality, including both qualitative and quantitative evidence of distance, which we discuss further below. The trial court decision, for example, led with details of Texas’ size, “nearly 280,000 square miles [and] ten percent larger than France.” (Whole Woman’s Health v. Lakey, 2014: 681). The plaintiffs’ Supreme Court briefs featured a map showing the location of abortion providers, indicating those that had closed as a consequence of the admitting privileges requirement, as well as those that would close if the ASC requirement were upheld.-

Yet not all judges who heard the case as it worked its way to the Supreme Court comprehended or credited the burden of distance. During one oral argument before the U.S. Court of Appeals about the admitting privilege requirement, Judge Edith Jones downplayed the burden of distance, asking, “Do you know how long [driving 150-miles, the distance between the RGV and the nearest abortion provider in Corpus Christi] takes in Texas at 75 miles per hour? And this is a peculiarly flat and not congested highway.” Supreme Court Justice Ruth Bader Ginsburg, on the other hand, commented during oral argument that Texas H.B. 2 was not a problem for women “who

have the means to travel” or for “those who live in Austin or Dallas—but the women who have the problem [are those] who don’t live near a clinic.”

Ginsburg thus focused on the burden of travel, recognizing the fundamentally different positions of women who live near a provider or who can afford to travel a long distance, as compared to those living far from a clinic, especially if they are low income. -

Ginsburg’s question surely reflects the plaintiffs’ litigation strategy, which focused on the travails of women in the Rio Grande Valley, where the admitting privileges requirement had already closed the area’s only two clinics, in McAllen and Harlingen. As a result, RGV women had to travel at least 235 miles each way to a provider in San Antonio for abortion services. One attorney described what that journey was like:

*...[T]here are a lot of communities in the [Rio Grande] Valley that don’t have paved roads. There are some public buses, but the public buses don’t reach all of the places where people live [or] go all the way to San Antonio... If you can get to McAllen or Brownsville, one of the urban centers in the Valley, then you can get a commercial bus to take you to San Antonio, but you have to get there at 4:00 in the morning and you have to change twice, and then you can’t—there’s no bus that’s going to get you back [to the RGV the same day] after your appointment, which is going to take several hours.*

Although 90% of RGV residents are Latino, and the poverty rate for that area is a staggering 38% (U.S. Census Bureau), the plaintiffs’ brief did not include those data points. It did, however, note that “the region is largely rural and a substantial percentage of its residents are poor,” with an average median

income \$19,000 below the state average (Plaintiffs' Trial Brief, *Whole Woman's Health v. Lakey*, 2014: 29). Plaintiffs' pleadings focused secondarily on women in West Texas, as the ASC requirement threatened closure of the sole remaining abortion provider in El Paso. If that clinic closed, West Texas women would have to travel as far as 550 miles one-way to San Antonio, also the location of their nearest in-state provider (*Whole Woman's Health v. Cole* 2015: 596).<sup>5</sup>

To understand the significance of *Whole Woman's Health's* attention to distance, it is helpful to situate it in the context of prior cases. The Supreme Court recognized the right to an abortion in its 1973 decision in *Roe v. Wade*. Prior to that ruling, some states permitted abortion and others did not, resulting in an uneven patchwork of abortion availability that required many women to travel significant distances for abortion services (Greenhouse and Siegel, 2012).<sup>6</sup> The *Roe* Court relied on a constitutional right to privacy in holding that states could not make laws that criminalized abortion. The Court also clarified that some state regulation of abortion was permissible,

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<sup>5</sup> An abortion provider was available across the state line in New Mexico. However, the Fifth Circuit had previously held that for the purposes of applying the undue burden analysis, a court may only consider the effect a law will have within the regulating state and not the availability of abortion services in neighboring states (*Jackson Women's Health v. Currier*, 2015: 457-58).

<sup>6</sup> The same was and is true in Canada. Prior to the Canadian Supreme Court's 1988 decision in *R. v. Morgentaler*, abortion was illegal unless approved by a hospital's Therapeutic Abortion Committee (Palmer, 2011). Many women traveled across Canada and to the United States prior to *Morgentaler*, and abortion availability is still uneven in Canada, causing many women still to travel great distances for the service (Sethna and Douell, 2013). The issue of cross-border travel for abortion still arises in countries like Ireland, where abortion remains illegal, causing women to travel to the United Kingdom for the procedure (Sethna et al., 2013: 30).

less at the outset of a pregnancy when a woman's right clearly outweighed that of a non-viable fetus, more later in the pregnancy.

In the wake of *Roe*, many states passed laws regulating abortion, testing what would be constitutionally permissible. One of the most common types of regulations required that women wait between 24 and 72 hours after an initial consultation with an abortion provider before she could have the procedure, a wait intended to compel her to reflect on the choice and thus to ensure her "informed consent" ("waiting period" or "informed consent" laws). The Commonwealth of Pennsylvania passed a law that included such a waiting period among other regulations, and in 1992, the U.S. Supreme Court considered the law's constitutionality in *Planned Parenthood of SE Pennsylvania v. Casey*. The Supreme Court in *Casey* articulated a new test for government regulation of abortion: whether a law constituted an "undue burden" on the right to terminate a pregnancy.

The *Casey* Court concluded that the waiting period/informed consent provision did not constitute an undue burden, even as it recognized that the law imposed the added cost and inconvenience of an overnight stay or two separate journeys for those living some distance from a provider. The Court characterized as "troubling in some respects" the trial court's finding that "for those women with the fewest financial resources, those who must travel long distances, and those who have difficulty explaining their whereabouts to

husbands, employers, or others, the 24-hour waiting period will be ‘particularly burdensome’” (Planned Parenthood of Southeastern Pennsylvania v. Casey, 1992: 2825). Nevertheless, the Court did not view the burden as sufficient to invalidate the law.<sup>7</sup>

In the wake of *Casey*, pro-choice groups brought challenges to many states’ waiting period/informed consent laws. Yet no federal court of appeals ever recognized distance or travel as constituting the entirety or even some component of an “undue burden” (Pruitt, 2007). This changed only with the U.S. Supreme Court decision in *Whole Woman’s Health*.

The *Whole Woman’s Health* plaintiffs’ strategy for making distance legally cognizable is compelling in its own right, and as we demonstrate below, other considerations that facilitated that strategy are worth examining. What kind of knowledge—and whose—did this strategy deploy? How did attorneys professionally and also *personally* evaluate it? To what extent was it recognized or neglected by the courts? To answer these questions is to meaningfully situate *Whole Woman’s Health* in feminist political geography scholarship on knowledge and knowledge claims, and to likewise demonstrate both the case’s immediate and more theoretical implications.

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<sup>7</sup> The Casey court did, however, strike as unconstitutional a provision of the Pennsylvania law that required married women to notify their husbands before they could get an abortion.

## **Making (Rural) Distance Matter**

In this section, we underscore distance—in particular, distance as a feature of rural life—as a critical but often neglected concept with implications for both feminist and legal strands of geographies scholarship. To do so, we first briefly introduce the feminist legal studies literature about abortion law. We next turn to feminist political geographies scholarship. As our study illustrates, the questions of power, citizenship, difference and situated knowledge that the field prioritizes (Staeheli and Kofman, 2004) are innovatively augmented by an integrated socio-legal consideration of abortion regulations, distance, and rural women’s expertise and experiences. Drawing on this literature as well as on the nascent field of critical rural studies (Fulkerson and Thomas, 2013), we additionally engage with and challenge the broader field of legal geography, offering a ruralist intervention into an overwhelmingly metrocentric subdiscipline.

## **Feminist Legal Theory and Abortion**

Although the burden of travel was a prominent concern prior to the U.S. Supreme Court’s 1973 decision in *Roe v. Wade* (Greenhouse and Siegel, 2012), U.S. feminist legal scholars and litigators have generally not identified distance, travel, or rurality as major issues in relation to abortion in the four decades since *Roe*. In the intervening years, pro-choice advocates have invested considerable energy and resources in actually getting women to

abortion providers by funding for their travel (National Network of Abortion Funds, 2017), but pro-choice litigators have dedicated little attention to explaining or illustrating for courts the burden of distance. In *Casey*, for example, the petitioners brief to the Supreme court made three mentions of “low-income, young, rural or battered women,” (Petitioners Brief *Planned Parenthood of SE Pennsylvania v Casey* 1992), but it did not, for example, detail the limits of public transportation in rural Pennsylvania nor discuss the price of bus tickets. The briefs did not meaningfully illustrate the burden of distance to metro-centric judges who might not intuitively grasp the reality facing a low-income woman who lived a significant distance from a provider (Pruitt, 2007). This failure to attend to rurality and illustrate distance in a robust way no doubt reflects the difficult choices lawyers must make in appellate litigation, when strict page limits are imposed on legal briefs, and litigants face tough decisions regarding which issues and arguments to prioritize.<sup>8</sup>

The relative lack of attention to rural women and distance in abortion litigation presumably also reflects the competing preoccupations of feminist legal scholars engaged with reproductive justice issues. These scholars have focused on issues such as the constitutional foundations for the right, the autonomy of women to choose termination of a pregnancy, and the practical

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<sup>8</sup> Supreme Court Rule 33 2(b) limits the parties’ briefs to 40 pages and reply briefs to 15 pages.

medical consequences of regulation (Siegel, 1992). The U.S. abortion law literature has also taken up issues of sex inequality, constructions of gender, and evolving views of motherhood (Siegel, 1992). While legal scholars do address the unevenness of abortion access, the disparities are typically presented as a function of age, race and/or poverty<sup>9</sup> rather than in relation to geography (Fried, 2000; Murray and Luker, 2014; Siegel, 1992; Sanger, 2017; but see Pruitt 2007). Indeed, the first U.S. textbook on reproductive rights and reproductive justice does not use the word “rural” a single time (Murray and Luker, 2014). That the textbook mentions travel and distance, albeit in passing, is surely a function of the way pro-choice forces strategized and presented their constitutional challenges to Texas H.B. 2.<sup>10</sup> As we have already illustrated, *Whole Woman’s Health* brought distance to the foreground of their “undue burden” argument in a way different from any prior constitutional challenge to an abortion regulation.<sup>11</sup>

<sup>9</sup> Interestingly, Mr. Justice Blackmun, writing for the majority of the Supreme Court in *Roe v. Wade* observed that “poverty, and racial overtones tend to complicate and not to simplify the problem.” *Roe*, 1973: 116.

<sup>10</sup> In the span of nearly 1000 pages, the textbook authors observe only, in relation to early stages of the Texas H.B.2 litigation, that the Fifth Circuit Court of Appeals was not convinced that the increased travel distance from the Rio Grande Valley to abortion clinics up to 150 miles away constituted an undue burden (Murray and Luker, 2014: 719).

<sup>11</sup> To be clear, the *Whole Woman’s Health* briefs in the Supreme Court litigation actually devoted relatively little attention to the matter of distance, but that must be understood in the context of the many issues that the petitioners had to address in order to win their case, among them the lack of health benefits of H.B. 2 and the procedural issue of claim preclusion. Further, petitioners to the Supreme Court are limited to a 40-page brief and a 15-page reply brief.

The amicus curiae brief filed by the Public Health Deans, Department Chairs, and Faculty and the American Public Health Association. That brief described in great detail the transport options and accompanying costs for women traveling from different cities in Texas to the remaining abortion providers, e.g., “[t]rips from Lubbock to Fort Worth by bus take roughly six to eight hours and cost from nearly \$80 to \$180 round-trip” and a flight would

This focus on distance in *Whole Woman's Health* was compelled by the operation of TRAP laws, which have proliferated dramatically since 2010 (Guttmacher Institute, 2017). Unlike prior abortion regulations that targeted women (e.g., by imposing waiting periods or consent requirements), TRAP regulations target abortion providers with the goal of putting them out of business. This has proved a very successful strategy, as the implementation of Texas H.B. 2 illustrates. Once the providers closed, the availability and spatial distribution of abortion services was so fundamentally altered that attention to increased travel burdens was virtually unavoidable.

We use the opportunity presented by constitutional challenges to the Texas TRAP regulations to draw the obstacles of travel and distance back to the theoretical fore, as they were in the pre-*Roe* period. In short, we trace the path of the pro-choice advocates in *Whole Woman's Health*. Feminist legal geography is a natural frame for engaging with these laws.

### **Feminist Political Geography**

A response to the marginalization of feminist perspectives in politics and political geography (Brown and Staehle, 2003; Staehle and Kofman, 2004) and even geography more generally (Sharp, 2005), feminist legal geography has meaningfully moved critical attention from the macro level of

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cost \$181. (Public Health Deans et al. 2016: 35). The brief also documented the rates of carlessness, as well as poverty, in many cities that had lost abortion providers due to H.B.2.

political analysis to more complex engagements between private and public spheres; to diffuse, multifaceted and relational understandings of power and empowerment; to social and cultural citizenship; and to political geographies that fluidly cut across gendered constructions of “formal” and “informal” (Staehle and Kofman, 2004; see also Brownill and Halford, 1990; Cope, 2004; Secor, 2002). While influenced by all of these myriad contributions, we build in particular on feminist political geography’s work on *scale* in tracing anti-abortion legislation across dimensions of scale that span the body (Marston, 2000; Nast, 1998) and extend to the national scale, here the highest court of a nation-state.

We also attend to feminist geographers’ engagement with situated knowledge (Haraway, 1988; Hyndman, 2004). In this context, situated knowledge refers to lived understandings of rural spatiality and distance, as well as to the varying degrees to which rural women’s experiences are recognized and understood at differing scales of the litigation process and mobilized elsewhere. This article thus represents an opportunity for multifaceted intervention, as rural geographers have historically appeared reluctant to embrace “feminist perspectives” (Little, 2002), and feminist political geography still largely prioritizes urban space and movements (Fenster, 2005; Nelson and Seager, 2008; Parker, 2011; Preston and Ustundag, 2008; Wekerle, 2004).

Similarly, legal geographers—like legal scholars more generally—have rarely attended to the rural, particularly in the U.S. context (Pruitt, 2014). It is unusual for scholars to recognize the localized operation of law in diverse rural places (cf. Havard, 2001; Turton, 2015; White, 2002; Pruitt and Colgan, 2010) or to consider, let alone interrogate, the presumed co-constitutive relationship of law and rurality (Gillespie, 2014; Pruitt, 2014). This urbanormativity means that the built environment (Braverman 2009; Clowney, 2013) attracts far more scholarly energy than the apparently “empty” spaces of the countryside (cf. Halfacree, 2006; Young, 2006), leaving rurality peripheral to the field’s lines of inquiry (Pruitt, 2014). How legal geographers can meaningfully theorize and mobilize rural space, and specifically *distance* as a feature of rural life, remains a significant question, and it is one we address.

Consistent with the metrocentric orientation of the discipline, when legal geographers take up the study of rights, they tend to focus on the regulation of and competition for space, as reflected in Mitchell’s seminal *The Right to the City* (2003; see also Clowney, 2013; Blomley and Pratt, 2001; Blomley, 2007, 2012; Braverman, 2009). Legal geographers have also grappled with rights in relation to mobility, but that work has also been limited to a particular array of rights, including the right to move goods (interstate commerce) and the right to travel, including immigration

(Creswell, 2006). Meanwhile, feminist geographers have observed that many of these rights are male-centered (Massey, 1993; see also Dowler and Sharp, 2001; Staeheli, 2001; Taylor, 2000). We extend this critique by analyzing a right that is unambiguously salient to women.

The questions we address have practical import, too. In recent years, distance has been implicated repeatedly—albeit sometimes in ways the litigants did not surface or amplify—in laws restricting the exercise of two fundamental rights: abortion and voting rights.<sup>12</sup> This phenomenon suggests that it is not only scholars of legal geography who should be thinking about distance, but also lawmakers, lawyers, and judges. With this paper, then, we aim to expand notions of what legal geography is “good for,” to illustrate its utility across disciplines and professions (Delaney, 2015: 267-68).

### **Recognizing the Legal Significance of “Empty” Land**

To understand the full import of rural distance, we turn to its apparent *emptiness*. As demonstrated below, rural distance is at once material and

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<sup>12</sup> One example of latent attention to spatiality is the Supreme Court’s decision in *Crawford v. Marion County Election Board* (2008), which upheld the requirement of a photo voter identification (ID) law. In his dissent, Justice Souter discussed the lack of public transportation in many Indiana counties in relation to how voters would get to a public agency to secure a voter ID document, but he never talked about the burden of distance as such.

Ironically, Texas legislation that pre-dates H.B. 2 similarly recognized the burden of distance in granting an exception to the state’s mandatory waiting period to women who live more than 100 miles from an abortion provider (Texas Health and Safety Code, 2011: § 171.012 (b)(1)-(2)). In other words, this legislation saved these women from making the two trips to an abortion provider, though *Casey* found the two-trip requirement permissible.

metaphorical: Wrapped up in it are powerful assumptions of vastness, im/mobility, and isolation. Accordingly, the highway that spans and transects rural distance is both everything—“[brutalizing] the countryside and the land, slicing through space like a great knife,” (Lefebvre, 1991[1974]: 165)—and nothing, the archetypal “non-place” (Augé, 1995). Drawing on Dalakoglou and Harvey (2012), we recognize the *contested emptiness* of this distance is powerfully indicative of more complex sociospatial and legal relationships. Indeed, while perhaps imagined as a “non-place” by a Supreme Court Justice or an urbanist legal geographer, rural distance proves “replete with social relations, with material histories, with regulatory forces... [and with] the simultaneity of global circulation and local lifeworlds of (im)mobility, speed, motion, friction, tensions and journey” (Dalakoglou and Harvey, 2012: 463).

The obscured *fullness* of this emptiness also complicates prevailing narratives of rural distance. It allows for the simultaneity of isolation as a disadvantage (Monk, 2000; Pruitt, 2014; Stratford, 2006; Young, 2006) and a resource (Royle, 2007; Sherman, 2015; Pruitt 2008a), and for immobility to connote defeat, failure, or being left behind (Morley, 2000; Pruitt, 2011; Creswell, 2006), as well as selected and practiced forms of insulation (Vannini, 2011). In relation to abortion access, these complex rural realities have been varyingly characterized as extra-legal (Johnstone, 2014; Sethna et al., 2013) or as legally and administratively prescribed (Ackerman, 2015). In this way, the “empty place” becomes a repository of relationships and networks (Pruitt 2008a; Young 2006), with distance proving relational-material and epistemic (Kaljonen, 2006). Consequently, recognizing “empty” distance as both socially and legally constructed (Pruitt, 2014) and agentively traversed (cf. Burkstrand-Reid, 2010; Pruitt, 2007, 2008a, 2008b) is necessary to comprehend a more latent reciprocity, namely that of place-based knowledge (Bartel et al., 2013: 349) and of being legally “known.”

### **Bridging Distance: Visibility, Empathy, and Justice**

Catharine MacKinnon famously quipped that, for women, “law is high up, and a long way off” (2005: 35), and Pruitt elsewhere suggests the same is true for rural people and places (Pruitt, 2014). Following this, material and social distance magnify the syllogism: legal protections are especially

removed from women in rural places (Pruitt 2007, 2008b). This also underscores rural women’s intersectional invisibility (Purdie-Vaughns and Eibach, 2008) in the context of anti-abortion legislation (Pruitt, 2007; Pruitt and Vanegas, 2015). As much of the non-legal scholarship on abortion access indicates (Colman and Joyce, 2011; Lichter et al., 1998; McTavish, 2015; Palmer, 2011; Sethna, 2006), it is often the distance between a woman’s community and an abortion provider—and how this distance is/not traversed—that powerfully illuminates the otherwise invisible experiences of marginal members within marginalized groups. That this distance may include an internal immigration checkpoint (Grossman et al., 2010; Huddleston, 2016), for example, for women living in South Texas, demands necessary acknowledgment of the intersecting identities of women, including those who are undocumented, low-income Latinas living in *colonias* (informal settlements) in the Rio Grande Valley (Gomez, 2015).

Distance also reveals other largely “invisible” realities: the particular spatial and social inaccessibility of sexual and reproductive health services for many rural women, especially young ones<sup>13</sup> (Jewell and Brown, 2000; Sethna and Doull, 2007; Pruitt, 2007; *Hodgson v. Minnesota*, 1990; Jane’s Due Process, 2017); the financial and bureaucratic burdens Native American

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<sup>13</sup> In *Hodgson v. Minnesota*, 497 U.S. 417 (1990) Justice Marshall, concurring in part and dissenting in part, wrote: “The burden of such travel, often requiring an overnight stay in a distance city, is particularly heavy for poor women from rural areas. Furthermore, a young woman’s absence from home, school or work during this time required for travel and for the hearing itself can jeopardize the woman’s confidentiality.” *Id.* at 476.

women may face in accessing an abortion, particularly if it includes travel beyond a remote community or reservation (NAACP, 1992: 22; Sethna and Doull, 2013; Pruitt and Vanegas, 2015); and the socio-legal advantages and vulnerabilities implicit in driving and carlessness (Pruitt 2007, 2008b; Sanger, 1995).

As noted earlier, the *Whole Woman's Health* litigation implicates not only distance, but also im/mobility and assumptions about it. Creswell asserts, "law is one very important site in which mobilities are produced" (2006: 735), and indeed, for decades, most courts have assumed that women enjoy sufficient mobility to get to an abortion provider—if they want an abortion badly enough (Burkstrand-Reid, 2010; Planned Parenthood of Southeastern Pennsylvania v. Casey, 1992; Pruitt, 2007; Pruitt and Vanegas, 2015). *Whole Woman's Health* soundly rebuts that notion, taking seriously distance as a barrier, along with the struggle for actual, physical mobility from one place to another, a struggle that significant numbers of women face.

We consider these socio-spatial and legal realities initially at the scale of the body (Massey, 1993; Marston, 2000), which demands a simultaneous recognition of law as both embodied (Philippopoulos-Mihalopoulos 2014: 55; Pruitt, 2008a; Siegel, 1992) and emplaced, i.e., as determining when and how much distance is legally salient. Acknowledging the lived quality of a

legally imposed distance does more than render visible so many intersecting invisibilities: it arguably induces a more just and empathic recognition of both structural interpellation and a woman's individual agency (Little, 2016: 3) in the context of restricted access to abortion services.

As Michael Crozier (1999: 626) notes, travelling long distances inherently challenges abstract theoretical conceptions of space as "infinitely minute": "The [traveler]... (body aching, head throbbing) would beg to differ..." Most of us know this feeling, whether sustained from a long commute on public transit, a road trip, or a red-eye flight. We need not cross the "abortion desert" (Hennessy-Fiske, 2016)—contiguous clusters of U.S. states with restrictive laws and dwindling numbers of clinics—in order to identify with those who have. We might be able to imagine the sometimes punishing nature of distance and, in light of the aforementioned "invisibilities," the urgency and intrepidity of those who traverse such unfamiliar yet consequential terrain (see e.g. Greenhouse, 2016; Hennessy-Fiske, 2016; Sethna and Doull, 2013).

As one attorney Statz interviewed described, even the *simulated* trip between the Rio Grande Valley to an abortion provider and back is taxing:

Rewire [then RH Check (Grimes 2014)] had a couple of their correspondents do a road trip... They drove from McAllen to San Antonio and back [filming the drive]. And one day when I was working I had it on, like the background on my screen. It was all day. And they didn't have an appointment—they didn't have an abortion in the interim, they just drove there and drove back. And it felt like a very grueling experience, [even] just watching that.

As we further demonstrate below, when considered, experienced, or even *virtually* traversed, an expanse of rural distance is at once a bridge, connecting a profoundly felt reality to largely invisible sociolegal and spatial vulnerabilities and to opportunities for mobilization.

### **Making Distance Legally Cognizable in *Whole Women's Health v. Hellerstedt***

As noted in our overview above, the plaintiffs in *Whole Woman's Health* presented evidence to substantiate and illustrate the burden of distance, including both quantitative and qualitative testimony. Dr. Dan Grossman, a public health scholar, contributed the former, which consisted of projections about the increased travel distances facing women (see also Gerds et al., 2016). He testified, for example, about the consequences of the admitting privileges requirement:

Between November 1, 2012 and May 1, 2014," that is, before and after enforcement of the admitting-privileges requirement, "the decrease in geographical distribution of abortion facilities" has meant that the number of women of

reproductive age living more than 50 miles from a clinic has doubled (from 800,000 to over 1.6 million); those living more than 100 miles has increased by 150% (from 400,000 to 1 million); those living more than 150 miles has increased by more than 350% (from 86,000 to 400,000); and those living more than 200 miles has increased by about 2,800% (from 10,000 to 290,000). (Joint Appendix: 238-242 quoted in *Whole Woman's Health*, 2016: 2302)

Grossman also projected in similar, quantitative terms the consequences of upholding the ASC.

Lucila “Lucy” Felix, state health educator, or *promotora*, provided what might be seen as qualitative testimony about the burden facing women in the RGV. Felix was a key source of local, place-based knowledge, testifying at trial about the socioeconomic deprivation of the Rio Grande Valley and the struggle there for access to health care, including reproductive health care.<sup>14</sup> She also spoke specifically to the impact of increased travel distances caused by the closure of all RGV clinics<sup>15</sup>:

[T]he availability of transportation decreases and the cost of transportation increases with the length of the journey. An increase of over 470 miles round-trip is incredibly significant for

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<sup>14</sup> In her other role as Senior Texas Field Coordinator for the National Latina Institute for Reproductive Health (NLIRH), Felix helped to lead *Nuestro Texas* (Our Texas), a campaign by the Center for Reproductive Rights and NLIRH that collected individual stories from RGV women to develop policy reports documenting the impacts of state funding cuts to family planning services in the region. <http://www.nuestrotexas.org/pdf/NT-spread.pdf>

<sup>15</sup> It is not customary in U.S. abortion litigation for women seeking abortions to be named plaintiffs who set forth the details of their own lives in relation to the undue burden standard. (*Whole Women's Health*, 2016: 2322; cf. Hodgson). Thus, in a sense, Lucy Felix served as a proxy for the burdened women, speaking for them. Indeed, the Fifth Circuit Court of Appeals referred to her testimony as hearsay. (*Whole Woman's Health v. Cole*, 2015: 593 n.39).

a woman in the Rio Grande Valley. There is no public transportation that goes between the Rio Grande Valley and San Antonio, and it is over a 3.5 hour drive each way. That amounts to a minimum of 7 hours of travel time. Gasoline costs are significantly higher than if a woman only had to travel within the Rio Grande Valley, and it is harder for a woman without a car to find someone willing and able to drive her. (If a woman were going to a clinic in McAllen, a friend or neighbor could drop her off, return home, and then pick her up when she was done. But San Antonio is too far away for that. The driver must commit to accompanying her for the whole day.)

Felix also noted the added costs of abortion for women who already had children, who must either find child care or take their children with them, thereby incurring additional costs and delays for “eating, napping, and/or bathroom breaks” (Joint Appendix, Vol. I, *Whole Woman’s Health v. Cole* (No. 15-274) 2015: 358-70).

Mentioned often and with clear appreciation by the attorneys Statz interviewed, Felix’s work and testimony powerfully illuminates the intersectional invisibility of women of the Rio Grande Valley. One attorney, Naomi, reflected, “[Lucy] showed... that this legislation will have concrete and substantial consequences in the lives of women who are disproportionately affected because of their poverty. These are also women of color, and they also face risk and vulnerability in other ways, because of their immigration status, because there’s no transportation—a combination of all of these factors which makes it impossible for them to access healthcare.” At once acknowledging these structural inequalities *as well as* the agentive

power of women (Little, 2016) in the Rio Grande Valley, Naomi added:

*You have communities still off the grid—colonias—right? [They're] building their own housing, trying to find access to their own electricity and water sources, their own transportation... it [is] such extreme resilience in the face of an absolute disinterest on the part of so many people, including the government... The level of deep poverty, of poverty of children, and the healthcare crisis and the juxtaposition of all of these issues [with] a lack of dignified housing, lack of dignified work... So to hear some of these stories [through Lucy], to see how in every facet of their lives they were really tried to be made invisible—and yet... these women were really finding their voice as a community on an issue that could be politically ostracizing, and were willing to use whatever, if any, political power—we want to talk about our healthcare, our bodies—to reframe this issue as a healthcare crisis... The way that they were organizing, their willingness to step out of the shadow that was engulfing them in so many ways....*

Here Naomi implicitly challenged a polarized interpretation of isolation—as a failure or a choice, a disadvantage or a resource—by recognizing *mobilization amidst immobility*.

Illuminating the complex realities navigated by women in isolated and arguably “forgotten” *colonias* (Rivera, 2014), Lucy Felix’s testimony “came across as very powerful and as very hard to ignore,” stated Tom, another attorney. “You know... if you never have to travel to the Rio Grande Valley, you can ignore the reality of these women. So bringing Lucy in to testify...her willingness to step up to that and literally speak truth to power...had a very moving effect.”

Yet in spite of the “moving effect” that Tom observed, among the

courts adjudicating whether Texas H.B.2 was an undue burden—including the federal district court judge who heard Felix’s testimony first hand—only one court referred directly to her testimony. The Fifth Circuit Court of Appeals mentioned Felix’s testimony, but it did not credit the testimony as establishing an undue burden; indeed, the court dismissed her testimony by characterizing it as secondhand or hearsay. (*Whole Woman’s Health v. Cole*, 2015: 593 n.39). As with the Grossman testimony, the plaintiffs presented the Felix testimony to the Supreme Court as part of the Joint Appendix, which collected all the filings and transcripts since the case was filed in district court, but the Court did not mention the Felix testimony in the oral argument or in its opinion.

The failure to acknowledge Felix’s testimony was in sharp contrast to the Court’s attitude toward Dr. Grossman’s quantitative data, which the plaintiffs also had not mentioned in their briefs. During oral argument, the U.S. Supreme Court Justices engaged the parties’ lawyers in five distinct exchanges about Dr. Grossman’s data. The Court’s opinion also extensively quoted and cited Grossman’s testimony regarding the numbers of women facing increased travel distances to abortion providers due to H.B.2.<sup>16</sup> The Court thus exhibited a professional bias in favor of the public health scholar’s quantitative testimony, perhaps a consequence of its being so far-removed

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<sup>16</sup> Dr. Grossman’s testimony was disputed by an expert witness testifying on behalf of the State of Texas. The Court found Dr. Grossman’s testimony to be the more credible of the two and relied on it. (*Whole Woman’s Health v. Hellerstedt*, 2016: 2316-17).

from the RGV or because of Dr. Grossman's more recognizably "elite" credentials.

Thus the *quantification* of distance proved crucial in the *Whole Woman's Health* litigation. Attorneys varyingly described the numerical data as important and clear contributions to the factual record, or as a way to add necessary specificity or concreteness to the "undue burden" standard. One attorney viewed the quantification of distance as an appeal to presumptively urban-centric judges (Fulkerson and Thomas, 2013; Pruitt and Vanegas, 2015): "You know, the fact that women in El Paso would've had to drive 550 miles to the nearest Texas clinic," commented Tom, "I think that just resonates with people. It doesn't require too much of a mental leap to realize how difficult that is."<sup>17</sup> Sitting in his Manhattan office, another attorney highlighted this "mental leap" in relation to judges *and* attorneys: "The Supreme Court—they come from different cultural backgrounds, and they've lived in, you know, major metropolitan areas and maybe don't have the same connection [to rurality]... I don't want to paint with a broad brush, but you're somewhat far-removed from that. *I'm* sort of far-removed from that, right?"

Another attorney who worked on the case commented: "I understand why the state defaulted to the quantification of distance, and why it was

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<sup>17</sup> Yet the Fifth Circuit in *Abbott*, the predecessor to *Whole Woman's Health*, expressed skepticism about the burden of traveling between the RGV and Corpus Christi. Oral argument in *Planned Parenthood v. Abbott* (2014).

such a focus.” She hesitated and then added, “But it only tells a small piece of the story, that’s for sure... You know, it could still be difficult if it’s 30 miles.” A colleague similarly mentioned those women who live along the U.S.-Mexico border and have visas permitting them to travel lawfully only a certain number of miles within the U.S.<sup>18</sup> “So again,” she said, “with the closure of clinics on the border, those miles take on added weight, added meaning. It’s not *just* a question of distance.” Still another observed:

*Part of our evidence went to trying to demonstrate that while the law is going to impose burdens on women throughout Texas, women will experience those burdens in different ways. So... for women who are in rural communities where there’s not a clinic nearby, now they’re going to have to deal with longer travel and traveling outside of the region that they’re familiar with and comfortable with. That in and of itself can be a huge burden for people and a big deterrence for someone that doesn’t often go to the big city, having to go to San Antonio can be very foreboding, and particularly if it’s someone who’s younger, who’s traveling on their own, who’s been told all their life that it’s dangerous to go to the city... There are these sort of psychological burdens that come with having to make that trip, and just go somewhere that’s unfamiliar.*

The lawyer, speaking with the benefit of hindsight two months after the Supreme Court decision, echoed language the federal district court had used in its findings of fact about the undue burden: “inarticulable psychological obstacles.” That court had elaborated on the burden as a composite of many burdens, its weight necessarily varying from woman to

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<sup>18</sup> This distance is specifically to a border checkpoint 73 miles north of McAllen, in Falfurrias, en route to Corpus Christi or San Antonio (Huddleston 2016).

woman:

[T]he record conclusively establishes that increased travel distances *combine* with practical concerns unique to every woman. These practical concerns include lack of availability of child care, unreliability of transportation, unavailability of appointments at abortion facilities, unavailability of time off work, immigration status and inability to pass border checkpoints, poverty level, the time and expense involved in traveling long distances, and other, inarticulable psychological obstacles. These factors combine with increased travel distances to establish a *de facto* barrier to obtaining an abortion for a large number of Texas women who *might* choose to seek a legal abortion. (Whole Woman’s Health v. Lakey, 2014: 683)

Even though the federal district court did not link these finding to Felix, that court’s language seems to channel Felix’s testimony in all of its texture, depicting the complex challenges facing women who live in one of the poorest places in the United States, women who are also marginalized by their ethnicity and, in some cases, their immigration status.

By the time the case had reached the Supreme Court, however, this complexity was reduced to a recognition of the “particularly high barrier” the law presented for “poor, rural, or disadvantaged women,” (Whole Woman’s Health, 2016: 2302) a more succinct finding of the trial court.<sup>19</sup> Yet these three descriptors—poor, rural, disadvantaged—may be seen as an opaque reference to the particular travails of women in the Rio Grande Valley. These descriptors arguably refer to the region’s Latinas, a begrudging

<sup>19</sup> In the interim, the Fifth Circuit Court of Appeals reiterated this finding of fact by the federal district court, even as it drew a different legal conclusion regarding the “undue burden” question.

acknowledgment of those whom Naomi had characterized as “invisible.”

Finally, it is important to note that the Supreme Court in *Whole Woman’s Health* simultaneously touted and limited the significance of distance. As an apparent caveat to its conclusion regarding that burden, the Court added that “increased driving distances do not always constitute an ‘undue burden.’” (*Whole Woman’s Health*, 2016: 2313). The Court wrote, “those increases are but one additional burden, which, when taken together with others that the closings brought about, and when viewed in light of the virtual absence of any health benefit, lead us to conclude that the record adequately supports the District Court’s ‘undue burden’ conclusion.” (*Whole Woman’s Health*, 2016: 2313). The Supreme Court’s downplaying of distance in this way may have been aimed at doing more than giving due attention to other consequences of the clinic closures, e.g., fewer doctors and longer waiting times. The articulated limitation regarding distance is likely also attributable to respect for precedent—specifically the *Casey* finding that multiple trips to a provider, the practical consequence of the challenged waiting period—did not constitute an undue burden, even as those trips implicated distance, along with the added costs of time and money required to traverse it.

### **Conclusion: Why this Matters**

*Whole Woman’s Health* is the first case to put distance squarely before

the U.S. Supreme Court for a determination regarding its significance as a burden on a woman's right to terminate a pregnancy. The Supreme Court adopted some of the characterizations and conclusions of the trial court regarding the nature of the burden, including the express mention of "poor, rural or disadvantaged women." In this brief phrase, rural distance emerged as compelling. Of equal or greater significance, though, was the Court's recitation of quantitative data regarding how many women were situated how far from abortion providers as a result of the new regulations.

These Supreme Court findings are revealing not only in relation to the judicial cognizance of distance, but also from the perspective of feminist legal geography's understanding of knowledge and power. While the situated knowledge of Lucy Felix had a powerful influence on the plaintiffs' attorneys, it was the quantitative data put forth by Dan Grossman that the Court prioritized. Indeed, Grossman's testimony effectively eclipsed Felix's more qualitative understanding of the burden of distance as it intersected with other factors. By tracing what kinds of spatial narratives, whose expertise, and what types of data about distance influence legal outcomes—which *in turn dictate the terms on which women live their lives*—*Whole Woman's Health* invites a rethinking of rurality, gendered and elite knowledge, and judicial blind spots.

This attention to distance in *Whole Woman's Health* illustrates how

that which is often portrayed as “empty” land—whether devoid of the built environment and life more generally or of abortion providers more specifically—becomes *a legal framing of its traversal*, powerfully imbued with significance. “Landscapes are in many ways legal performances, with law acting as a fusing agent between place and identity” (Howe, 2008). The Supreme Court’s acknowledgement of the legal salience of sheer, vast, material space—of distance—fused space and identity, the identity of being rural. Its implicit recognition of Latinas in the Rio Grande Valley can likewise be said to fuse place and identity.

As it regards the recognition of rural vulnerability in relation to the exercise of rights, *Whole Woman’s Health* represents both a positive and a negative shift. On the one hand, because Texas is the second largest U.S. state in terms of land area, it presents an extraordinary case of distance as burden. (Only within the State of Alaska might one have to travel farther to reach an abortion provider). Plaintiffs were arguably wise to take to the Supreme Court this case rather than a challenge to similar legislation in a state covering less land area. At the same time, that the Texas case implicated such enormous distances does not necessarily bode well for litigation of similar issues in smaller states, where the distances to be traversed are not so great.

In terms of *other* fundamental rights and the impact of *Whole Woman’s*

*Health* outside the abortion context, we note that our exploration of distance raises a compelling parallel between abortion litigation and litigation regarding the right to vote. At least one federal district court has recognized that voter identification (ID) laws requiring travel to a public agency to obtain the requisite voter ID card/document are an “undue burden” on the right to vote (*Texas v. Holder*, 2014). While that finding was reversed on appeal, Supreme Court Justice Ruth Bader Ginsburg, dissenting from the Supreme Court decision not to review the case, invoked the burden of distance in terms that foreshadowed *Whole Woman’s Health*. Justice Ginsburg observed that “more than 400,000 eligible voters face round-trip travel times of three hours or more to the nearest [ID issuing] office” (*Veasey v. Perry*, 2014: 11). Thus the articulation of the burden of distance in *Whole Woman’s Health* may thus soon find ready application elsewhere, as a new wave of voter ID litigation is anticipated during the Trump presidency.

We have demonstrated that the legal and political recognition of distance is anything but straightforward, revealing and often reaffirming feminist understandings of knowledge and knowledge claims—in this case the partiality of whose “version” of distance matters, and when—and implicating “invisible” realities of gender, poverty and immigration status. By tracing how the courts who heard *Whole Woman’s Health* grappled with distance as, at once, “emptiness” and im/mobility, lived and embodied, and

qualitatively and quantitatively narrated, this article draws us closer to a more nuanced understanding of rural spatiality. By knitting together critical insights from feminist political geography, legal geography, and feminist legal theory, we have demonstrated that socio-legal scholarship on reproductive justice, spatiality, and rights needs a critical rural dimension.

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