

2017

Reproductive Healthcare Under a New Administration

Alexandra Lehr

Follow this and additional works at: <https://lawcommons.luc.edu/pilr>



Part of the [Civil Rights and Discrimination Commons](#), [Criminal Procedure Commons](#), [Environmental Law Commons](#), and the [Human Rights Law Commons](#)

Recommended Citation

Alexandra Lehr, *Reproductive Healthcare Under a New Administration*, 22 Pub. Interest L. Rptr. 79 (2017). Available at: <https://lawcommons.luc.edu/pilr/vol22/iss2/3>

This Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Public Interest Law Reporter by an authorized editor of LAW eCommons. For more information, please contact law-library@luc.edu.

Reproductive Healthcare Under a New Administration

Alexandra Lehr

Legislation and policy on reproductive healthcare is back to the forefront in the national discourse, although it was never far away. A Republican president, along with a Republican-controlled Congress and the changing composition of the Supreme Court, has driven the conversation forward. The federal government and state governments have been enacting new legislation concerning access to reproductive healthcare with varying amounts of success, and Americans have been reacting to this new legislation with varying levels of support and opposition.

Reproductive healthcare issues cut across intersectional and gender lines, and anything that happens on a federal or state government level relating to access to reproductive healthcare reaches every American. Reproductive rights are the rights of individuals to make decisions about their personal reproductive health.¹ Abortion rights have been a particularly contentious issue, and there has been an effort to roll back abortion rights on a federal and state level that has gained momentum with the election of Donald Trump.²

On the Federal Level

One of the first acts of Trump's presidency was to reinstate a policy that prohibits the granting of American foreign aid to health providers in countries that include abortion as a family-planning option.³ The prohibition instated January 2017, freezes funding to even nongovernmental organizations in countries that offer abortion counseling, or advocate for the right to seek abortion services.⁴ Research suggests that the policy may have actually increased abortion rates by limiting access to healthcare clinics that offer a variety of repro-

¹ *Reproductive health*, WORLD HEALTH ORGANIZATION, http://www.who.int/topics/reproductive_health/en/.

² Editorial Board, *Rolling Back Abortion Rights After Donald Trump's Election*, N.Y. TIMES, (Dec. 13, 2016), <https://www.nytimes.com/2016/12/13/opinion/rolling-back-abortion-rights-after-donald-trumps-election.html>.

³ Somini Sengupta, *Trump Revives Ban on Foreign Aid to Groups that Give Abortion Counseling*, N.Y. TIMES, (Jan. 23, 2017), <https://www.nytimes.com/2017/01/23/world/trump-ban-for-foreign-aid-abortion.html>.

⁴ *Id.*

ductive healthcare services, and it will likely heighten the risk of illegal, and unsafe abortions.⁵

Also on the federal level, the House of Representatives has introduced a bill that would make the Hyde Amendment permanent, which blocks taxpayer money from funding abortions.⁶ Even with the Hyde Amendment in place, the House has also introduced a bill that prohibits the availability of federal funds for Planned Parenthood and its affiliates unless they certify that they will not perform abortions for one year.⁷ Another bill introduced in the House imposes criminal penalties on anyone who performs an abortion or transports a woman across a state line for the purpose of obtaining an abortion.⁸

Despite the recent Supreme Court decision of *Whole Woman's Health v. Hellerstedt*, in which the Court held that Texas could not place restrictions on abortion policies that create an undue burden for women seeking an abortion, the federal government has threatened *Roe v. Wade*.⁹ *Roe v. Wade* found a legal right to abortion in the 14th Amendment, but many now see that decision in danger as President Trump has committed to appointing Supreme Court justices who he believes would help to overturn it.¹⁰

On the State Level

Legislation is being introduced on the state level as well that limits access to reproductive healthcare. In December 2017, Governor John Kasich signed a law banning abortions after 20 weeks of pregnancy in Ohio.¹¹ The United States Supreme Court has ruled that states cannot ban abortion before viability, or around 24 weeks.¹² Ohio, however, is not the only state to enact a 20-week ban; seventeen other states have adopted a similar ban, and the bans in Arizona and Idaho have been struck down as unconstitutional by federal courts.¹³ Governor Kasich has signed seventeen new restrictions since he took

⁵ *Id.*

⁶ *House Votes to Make Hyde Amendment Permanent*, SPEAKER RYAN PRESS OFFICE, (Jan. 24, 2017), <http://www.speaker.gov/press-release/house-passes-hyde-amendment>.

⁷ H.R. 354, 115th Congress, 2017.

⁸ H.R. 147, 115th Congress, 2017.

⁹ *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2318 (2016); *Roe v. Wade*, 410 U.S. 113 (1973).

¹⁰ Sheryl Gay Stolberg, *John Kasich Signs One Abortion Bill in Ohio but Vetoes a More Restrictive Measure*, N.Y. TIMES, (Dec. 13, 2016), <https://www.nytimes.com/2016/12/13/us/kasich-ohio-heartbeat-abortion-bill.html>.

¹¹ *Id.*

¹² *Rolling Back Abortion Rights After Donald Trump's Election*, *supra* note 2.

¹³ Stolberg, *supra* note 11.

office, and the number of abortion providers in Ohio has decreased from nine to sixteen.¹⁴ An Ohio court recently enjoined the state from enforcing a statute aimed at stopping government funding to health clinics that provided abortions, holding the statute violated the First Amendment and the Due Process Clause; this decision is currently being appealed.¹⁵ According to Alexandra Franco, Author and Associated Scholar at the Institute For Science Law and Technology, clinic closures affect “mostly low-income women who do not have the means to travel to clinics which may be located further away from where they live.”¹⁶ She adds that when general healthcare clinics close because they supply abortion services, it also affects men and children who utilize those general services, and “those closures will have a significant negative impact on low-income communities.”¹⁷

Conversely, legislation in other states has been widening access to reproductive healthcare. Governor Andrew Cuomo of New York announced his administration will require health insurers to cover medically necessary abortions and most forms of contraception at no cost.¹⁸ Besides legislation about insurance coverage, states can protect family planning. The Montana Legislature moved federal family planning funds to a fund controlled by the Montana health department to make it more difficult for the legislature to cut them.¹⁹

Conclusion

Access to reproductive rights has been controversial and fluctuating for a long time, but the election and new administration have been a catalyst for discussion and new governance on this issue. This renewed intensity runs from the top of state and federal governments down to the people, who are now not just affected by, but also instituting change at a grassroots level.

¹⁴ *Rolling Back Abortion Rights After Donald Trump's Election*, *supra* note 2.

¹⁵ *Planned Parenthood of Greater Ohio v. Hodges*, 201 F. Supp. 3d 898, 912 (S.D. Ohio 2016).

¹⁶ Interview with Alexandra Franco, Author and Associated Scholar at the Institute For Science Law and Technology (April 23, 2017).

¹⁷ *Id.*

¹⁸ Vivian Yee, *Andrew Cuomo to Widen Access to Free Abortion and Contraception*, N.Y. TIMES, (Jan. 20, 2017), <https://www.nytimes.com/2017/01/20/nyregion/new-york-abortion-and-contraception-andrew-cuomo.html>.

¹⁹ Editorial Board, *Protecting Reproductive Rights Under Donald Trump*, N.Y. TIMES, (Dec. 7, 2016), https://www.nytimes.com/2016/12/07/opinion/protecting-reproductive-rights-under-donald-trump.html?_r=0.