

REPRODUCTIVE JUSTICE LEGAL FAQs

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Q. What was the reproductive justice headline from 2016?

A. The most pro-choice presidential candidate ever lost to a man who presents the greatest threat to women's reproductive health care access since *Roe v. Wade*.

Q. What was the other, better headline from 2016?

A. In June 2016, the US Supreme Court decided *Whole Woman's Health v. Hellerstedt*, which struck down Texas TRAP (Targeted Regulation of Abortion Providers) laws requiring abortion providers to obtain admitting privileges at local hospitals and to outfit themselves as ambulatory surgical centers. In a 5-3 decision written by Justice Breyer, the Court reaffirmed "undue burden" standard from *Planned Parenthood v. Casey*, balancing the medical benefits of a regulation against the burden imposed by the regulation. Because of the vote count, the decision should remain intact irrespective of the views of a new Supreme Court Justice.

Q. What has happened since the *Whole Woman's* decision?

A. Since the ruling, abortion restrictions have been blocked in Alabama, Alaska, Arizona, Oklahoma, Wisconsin, and other states. In the last two weeks, courts blocked an ultra-sound requirement in Indiana and an order closing a clinic in Kentucky.

Q. Are states continuing to enact significant abortion restrictions?

A. Yes. While the abortion rate in the US is now the lowest since *Roe v. Wade* was decided in 1973, 18 states passed 50 new abortion restrictions in 2016. One of the most common is a 20-week ban, even though fetal viability is generally defined at 24 weeks.

Q. What does this mean in terms of *Roe v. Wade*?

A. *Whole Woman's Health* helps clarify and stabilize *Roe v. Wade*. Courts are likely to now focus on regulation-specific reviews, instead of a wholesale attack on *Roe*.

Q. How do religious liberty issues impact access to reproductive health care?

A. There is a new line of cases challenging access to reproductive health care based on religious exemptions under the Establishment Clause and the Religious Freedom Restoration Act (RFRA). Invoking these laws, health care entities and insurance plans deny access to birth control, emergency contraception, and abortion.

Q. What is RFRA?

A. RFRA was enacted in 1993 to restore the “compelling interest” standard to review of laws that place a substantial burden on religion. This law was sponsored by Sen. Chuck Schumer.

Q. What are the most significant cases to date involving religion and reproductive justice?

A. In 2014, the Supreme Court decided the *Hobby Lobby* case, which found that a closely-held corporation should be eligible for the religious exemption in the ACA for contraception and abortifacient medication. In 2016, the Supreme Court vacated a series of related cases with instructions to find a compromise (sometimes referred to as the *Zubik* cases).

Q. How would the confirmation of Judge Neil Gorsuch to the Supreme Court impact these issues?

A. Judge Gorsuch is a strong advocate of religious exemptions to access to reproductive health care. Judge Gorsuch joined the opinion of the 10th circuit in the *Hobby Lobby* case, later upheld by the Supreme Court. In fact, he wrote a separate opinion that would have gone even further in terms of recognizing religious exemptions.

Q. What is happening in Oregon?

A. Oregon is the only state in the country without legal restrictions on abortion access. But a proposed initiative, IP 1, has been certified for signature gathering for the 2018 election cycle. IP 1 proposes a constitutional amendment that restricts abortion access by banning public funding.