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Rights and Restrictions: Planned Parenthood's Intersection with the Law

Planned Parenthood is a well-known organization whose mission is to provide reproductive healthcare and sex education to people all over the country. Importantly, Planned Parenthood also functions as an advocate for reproductive justice; their action network helps to organize and fund educational and electoral efforts all over the United States.¹ As an organization that has been on the frontlines fighting for reproductive rights since its inception in the early 20th century, Planned Parenthood has a long and storied history when it comes to interaction with the law. The first birth control clinic in New York, which is claimed as the origin of Planned Parenthood, was shut down by the police just days after it opened.² Furthermore, several landmark Supreme Court decisions shape the legal and political landscape in which Planned Parenthood operates. Through exploring Planned Parenthood's interaction with the legal system, what emerges is a complex story about the relationship between public opinion, the courts, and the non-linear evolution of society over the course of a century.

The origin of Planned Parenthood can be traced back to a woman named Margaret Sanger. Sanger was born in New York to Irish parents. Her mother died young after bearing eleven children; Sanger largely blamed the toll of those pregnancies for her mother's early death. Sanger went on to become a nurse and an advocate for birth control. In 1914, Sanger published

¹ "The History & Impact of Planned Parenthood," <https://www.plannedparenthood.org/about-us/who-we-are/our-history>, (accessed 20 November 2023).

² Maria T Vullo, "Birth of Family Planning Clinics in America," *Judicial Notice*, Historical Society of the New York Courts, 47, 47-52.

her own magazine title *The Woman Rebel*.³ She was soon charged with violating New York's Comstock Law; the Comstock Act of 1873 was named for the Christian moralist Anthony Comstock, who led the New York Society for the Suppression of Vice, which served as a morality police for the public. The Comstock Act prevented the spread and circulation of "immoral" material, including,

"obscene, lewd, or lascivious book, pamphlet, picture, paper, print, or other publication of an indecent character, or any article or thing designed or intended for the prevention of conception or procuring of abortion, nor any article or thing intended or adapted for any indecent or immoral use or nature."⁴

Though this initial charge against Sanger was dropped, it wasn't the last time that she would run up against New York Law.

Two years later, in 1916, Sanger opened the first birth control clinic in Brooklyn, New York.⁵ Just nine days after the clinic's opening, Sanger was arrested and charged under Section 1142 of New York's penal code, which

"makes it a misdemeanor for a person to sell, or give away, or to advertise or offer for sale, any instrument or article, drug or medicine, for the prevention of contraception, or to give information orally, stating when, where, or how such an instrument, article, or medicine can be purchased or obtained."⁶

Importantly though, Section 1145 of the penal code of New York specifically exempted physicians from being charged under the Comstock law for issues relating to obscenity. Sanger

³ Debra Michals, "Biography: Margaret Sanger," National Women's History Museum, (2017). <https://www.womenshistory.org/education-resources/biographies/margaret-sanger> (accessed 18 November 2023).

⁴ Lee Boomer, "Comstock Act," *Women & the American Story*. <https://wams.nyhistory.org/industry-and-empire/fighting-for-equality/comstock-act/> (accessed 18 November 2023).

⁵ Michals.

⁶ *People v. Sanger*, 222 N.Y. 192 (1918).

ultimately lost her case and her appeal on the grounds that she was not a physician and that she was in violation with Section 1142. However, in the opinion in the court of appeals, Justice Crane asserted the supremacy of Section 1145; he reaffirmed that physicians could not be charged under the Comstock law and that they were permitted to “give such help or advice to a married person to cure or prevent disease.”⁷ Justice Crane went on to broadly define “disease” in a way that, importantly, included pregnancy. Though Sanger was convicted, this part of the decision opened the door for physicians to provide contraceptive care to patients, and sparked the opening of several new, legal, birth control clinics.⁸ Not long after the decision, in 1923, Sanger opened the Birth Control Clinical Research Bureau in New York City and established the American Birth Control League; these two organizations would ultimately merge to become Planned Parenthood.⁹

It is important to note how much of what is described above is having a resurgence in American society today. Public opinion around birth control and abortion has ebbed and flowed, as demonstrated by the cases explored next. Laws that at points seem to be things of the past, can return to the forefront of society in surprising ways. Today, several states are attempting to revive Comstock law. “Comstockery” is being used to censor material around the country. Anti-abortion activists in Texas have invoked Comstock law to argue for the illegality of the medical abortion pill, mifepristone.¹⁰ Legislators in Oklahoma passed a bill in the state senate which bans books containing “a predominant tendency to appeal to a prurient interest in sex.”¹¹ These are just two examples of the way in which several states have recently invoked Comstock law and

⁷ *People v. Sanger*, 222 N.Y. 192 at 195, 638 (1918).

⁸ Vullo, “Birth of Family Planning Clinics,” 53.

⁹ “The History & Impact of Planned Parenthood”.

¹⁰ Michelle Goldberg, “Opinion | The Hideous Resurrection of the Comstock Act,” *The New York Times*, 8 April 2023, sec Opinion. <https://www.nytimes.com/2023/04/08/opinion/comstock-laws-abortion-texas.html>.

¹¹ “Oklahoma Senate Restricts Pornographic Materials in School Libraries,” Oklahoma Council of Public Affairs. <https://ocpathink.org/post/independent-journalism/oklahoma-senate-restricts-pornographic-materials-in-school-libraries> (accessed 20 November 2023).

applied it to new and relevant issues; this demonstrates both the persistence of law over time, but also the way in which laws evolve and are manipulated in order to reflect the needs and wants of society at different times.

Quickly following its formal establishment, Planned Parenthood began to lead the reproductive rights movement and medical research propelling this movement forward. The fight for reproductive rights at this time, and the fight which is reflected in the courts, centers on the legality of birth control; this would shift to a focus on abortion rights once the right to birth control was largely established. The nature of the cases brought to the courts by Planned Parenthood and its employees demonstrate the state of society at the time and the saliency of certain issues. In the early to mid-20th century, all efforts were focused on legalizing a widespread distribution of contraception. This legalization began with a victory for birth control advocates in *United States v. One Package of Japanese Pessaries*. Margaret Sanger herself worked with her attorney, Morris Ernst, to bring this case to court.¹² The ruling effectively rejected Comstock law and made it legal for doctors to prescribe contraception.¹³ Though *People v. Sanger* paved the way for this decision, *United States v. One Package* was much more concrete and direct in its affirmation of a physician's right to provide contraception to married women, though this ruling only affected distribution in certain states, and not on a national level.

Following this case, Planned Parenthood helped to fund research for the birth control pill, which was approved by the FDA in 1960; this had an immediate and massive impact on hundreds of thousands of women across the country. Just five years later, in 1965, The United States Supreme Court heard *Griswold v. Connecticut* and issued a landmark ruling which established that the Constitution protected a married couples' right to privacy against a state's

¹² "The Margaret Sanger Papers Project," https://sanger.hosting.nyu.edu/articles/tracing_one_package/ (accessed 20 November 2023).

¹³ *United States v. One Package of Japanese Pessaries*, 86 F.2d 737 (1936).

restriction on birth control.¹⁴ The case was brought by Estelle Griswold and Lee Buxton. Buxton was a gynecologist at Yale medical school and Griswold was in charge of the Connecticut branch of Planned Parenthood. The two opened a birth control clinic together in conscious violation of a 1879 Connecticut law, which banned all forms of contraception. In doing so, they brought a case to the Supreme Court which challenged the validity of this law under the Fourteenth Amendment of the Constitution.¹⁵ The court sided with the appellant, as Justice Douglas “held that the right to privacy surrounding the conjugal relationship may not be frustrated by state law.”¹⁶ Various justices had different opinions on where the right to privacy was to be found in the Constitution, as it is not explicitly stated anywhere. Justice Douglas argued that the Third, Fourth, and Ninth amendments combined, constituted a right to privacy for married couples. Consequently, justices Harlan and White argued that the right to privacy existed within the Fourteenth Amendment, specifically the Due Process Clause.¹⁷ The decision in this case was a huge victory for Planned Parenthood, and the reproductive rights movement at large, as more states began legalizing birth control.

Not long after, in 1971, the Supreme Court would rule in favor of birth control advocates once again in *Eisenstadt v. Baird*. In this case, the court ruled that the Massachusetts law in question, which made the distribution of contraception to unmarried people illegal, was invalid. Interestingly, the reasoning in this case didn’t rely on the right to privacy, but rather on the rational basis test of the Equal Protection Clause of the Fourteenth Amendment.¹⁸ This case highlights the public sentiment at the time; amidst the Civil Rights movement and directly following it, other groups were successful in securing rights which they had been previously

¹⁴ Robert L Knupp, “Griswold v. Connecticut: Towards a Constitutional Right of Privacy,” Issue 4 Dickinson Law Review - Volume 69, 1964-1965: 417, 417-24.

¹⁵ “Griswold v. Connecticut,” Oyez, <https://www.oyez.org/cases/1964/496> (accessed 20 November 2023).

¹⁶ Knupp, “Griswold v. Connecticut,” 417.

¹⁷ *Griswold v. Connecticut*, 381 U.S. 479 at 499-503 (1965).

¹⁸ *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

denied. The Civil Rights movement helped galvanize the Women's Movement more broadly, and the birth control movement specifically.¹⁹ Planned Parenthood benefited directly from the rulings in both of these cases, as the legalization of birth control for broader groups of people meant an increase in demand for their services. Clinics sprung up all over the country, especially following the enactment of Title X of the Public Health Services Act in 1970. Title X is a federal family planning program, which provides funding for health services and family planning.²⁰ This act was, and continues to be, incredibly important for Planned Parenthood. It allows the organization to provide services to more people, especially those who are low income.²¹ Though crucial for Planned Parenthood and many other organizations, Title X has been threatened in recent years. The opposition to Title X reflects a resurgence in the mainstream nature of anti-abortion activism.

The global gag rule was introduced by President Ronald Reagan in 1984; the rule prevents foreign organizations who receive aid from U.S. organizations from providing services and information to their patients.²² Since the Reagan administration, the rule has been reinstated and struck down many times, reflecting the ebb and flow of domestic politics. The George W. Bush administration reinstated the rule, only for it to be overturned by the Obama administration just years later. However, in 2019, the Trump Administration reimplemented the gag rule and began implementing domestic restrictions on Title X. This gag rule, which went into effect in August, 2019, has two parts. The first prevents providers who are funded by Title X from

¹⁹ "The Pill and the Women's Liberation Movement | American Experience | PBS," <https://www.pbs.org/wgbh/americanexperience/features/pill-and-womens-liberation-movement/> (accessed 20 November 2023).

²⁰ "What Is Title X? An explainer," Physicians for Reproductive Health, <https://prh.org/what-is-title-x-an-explainer/> (accessed 19 November 2023).

²¹ "The History & Impact of Planned Parenthood".

²² "What Is the Global Gag Rule?," Planned Parenthood Action, <https://www.plannedparenthoodaction.org/communities/planned-parenthood-global/end-global-gag-rule> (accessed 19 November 2023).

referring patients for abortions or providing abortions.²³ Secondly, the gag rule blocks “Planned Parenthood health centers from receiving funding through Title X through an onerous ‘physical separation’ requirement.”²⁴ These restrictions had detrimental consequences for Planned Parenthood, and they attempted to challenge the rules legally over the course of two years. Ultimately, the rule remained in place until President Biden took office, and in November 2021, the rule was reversed; this allowed Planned Parenthood to rejoin Title X and begin to receive federal funding again.²⁵ The history of the gag rule, and this recent attack on Title X, demonstrate how the political leanings of an administration can have legal implications and consequences for organizations like Planned Parenthood. The reversal by the Biden administration emphasizes this as well, highlighting the malleable nature of these laws that may appear fixed or guaranteed.

In returning to the 20th century, following Title X and beginning in the 1970’s, a tangible shift towards abortion as the center of the reproductive rights movement occurs. Thanks to the efforts of Planned Parenthood, other advocates, and the Women’s Movement at large, states began to legalize abortion. New York made abortion legal in 1970, and a Planned Parenthood clinic in Syracuse became the first to offer abortions shortly thereafter.²⁶ Just three years later, in 1973, the Supreme Court heard the most famous case in the history of reproductive rights: *Roe v. Wade*. The question in *Roe* was whether abortion was a constitutional right.²⁷ In this landmark decision, the court ruled that the right to privacy found in the Due Process Clause

²³ “Changes to Title X: The ‘Domestic Gag Rule,’” Columbia University Mailman School of Public Health, 2 April 2021, <https://www.publichealth.columbia.edu/research/programs/global-health-justice-governance/our-issues-impact/sexual-reproductive-justice/changes-title-x>.

²⁴ “What Is Title X? An Explainer”.

²⁵ Dartunorro Clark, “Biden Administration Rolls Back Trump-Era Rule Restricting Federal Funds to Clinics over Abortion Services,” NBC News, 4 October 2021, <https://www.nbcnews.com/politics/white-house/biden-admin-rolls-back-trump-era-rule-barring-abortion-providers-n1280757> (accessed 20 November 2023).

²⁶ “The History & Impact of Planned Parenthood”.

²⁷ “*Roe v. Wade*,” Oyez, <https://www.oyez.org/cases/1971/70-18> (accessed 20 November 2023).

of the Fourteenth Amendment includes the right to an abortion. The court said that states could not regulate abortion within the first trimester, but that states did have certain rights in regulating abortion in the second and third trimesters.²⁸ *Roe v. Wade* ushered in an era which saw the expansion of abortion rights across the country, and Planned Parenthood continued to grow and thrive as the leading organization behind this fight. However, victory for Planned Parenthood and the reproductive rights movement inspired significant backlash and countermovement organization.

Over the next couple of decades, Planned Parenthood's facilities, workers, and patients faced extreme violence and opposition from anti-abortion groups.²⁹ Additionally, Ronald Reagan's presidency in the 1980's energized the conservative, pro-life movement. This era marked the heightened politicization and partisan nature of the abortion issue. Reagan's vehemently pro-life rhetoric placed the abortion conversation at the front of the American consciousness. He also took concrete steps which harmed reproductive rights and passed legislation limiting abortion access. The Hyde Amendment, an updated version of which was enacted during Reagan's time of office and endorsed by the president, prohibited patients from using Medicaid insurance to pay for abortions unless the life of the woman was in jeopardy.³⁰ This was very limiting, and it only allowed insurance payment for abortion in the cases of incest, rape, or life-endangering instances of pregnancy.³¹ President George H. W. Bush, who took

²⁸ *Roe v. Wade*, 410 U.S. 113 at 163 (1973).

²⁹ "The History & Impact of Planned Parenthood".

³⁰ Byron W. Daynes and Raymond Tatalovich, "Presidential Politics and Abortion, 1972-1988." *Presidential Studies Quarterly* 22, no. 3 (1992): 551, 545-61.

³¹ "The History & Impact of Planned Parenthood".

office next, was also pro-life and contributed to legal setbacks for Planned Parenthood and other organizations.³²

Another legal setback came in 1992, when the Supreme Court heard *Planned Parenthood of Southeastern Pennsylvania v. Casey*. This case evaluated the legality of five provisions of a Pennsylvania law which limited abortion access. The Act “requires that a woman seeking an abortion give her informed consent prior to the abortion procedure, and specifies that she be provided with certain information at least 24 hours before the abortion is performed” and that “unless certain exceptions apply, a married woman seeking an abortion must sign a statement indicating that she has notified her husband of her intended abortion.”³³ There were other provisions as well, including one about minors, but these two proved to be incredibly important. In its decision, the court ultimately upheld *Roe v. Wade*, but it also upheld all but one of the provisions of the Pennsylvania Law. This case established a new standard when it came to a state’s ability to regulate abortion, called “undue burden.”³⁴ The court defined undue burden as “a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.”³⁵ Unless a law violated the undue-burden test, it was considered valid. This ruling led to a massive increase in state regulation of abortion across the country, specifically in conservatively-controlled legislatures, and marked a significant setback for Planned Parenthood. This ruling allowed for the passing of laws which made it more difficult and more dangerous for them to provide their services to patients. Yet, Planned Parenthood remained committed to providing the best care that they could and continued to dedicate resources to advocating for reproductive justice.

³² Neil J. Young, “Perspective | How George H.W. Bush Enabled the Rise of the Religious Right,” *Washington Post*, 5 December 2018, <https://www.washingtonpost.com/outlook/2018/12/05/how-george-hw-bush-enabled-rise-religious-right/>.

³³ *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

³⁴ *Planned Parenthood v. Casey*, 505 U.S. 833 at 875 (1992).

³⁵ *Planned Parenthood v. Casey*, 505 U.S. 833 at 878 (1992).

Unfortunately for Planned Parenthood, a Supreme Court with a very different outlook on abortion as previous ones would soon issue its most controversial decision in decades. In June, 2022, following the court’s refusal to block a Texas law that banned abortion almost entirely, the Supreme Court ruled on *Dobbs v. Jackson Women’s Health Organization*.³⁶ The question at the center of *Dobbs* was whether a Mississippi law banning abortion after fifteen weeks was unconstitutional. In a 6-3 judgment, the court found that the Constitution does not contain the right to abortion, therefore overturning two precedents, *Roe v. Wade* and *Planned Parenthood v. Casey*, which had served as the law of the land for decades.³⁷ The majority opinion, delivered by Justice Alito, states, “The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including the one on which the defenders of *Roe* and *Casey* now chiefly rely—the Due Process Clause of the Fourteenth Amendment.”³⁸ This ruling marked the most devastating blow to Planned Parenthood in recent history; as of today, twenty-one states restrict or ban abortion entirely.³⁹

The Supreme Court doesn’t take the overturning of precedent lightly, which made this ruling all the more significant. In the wake of the *Dobbs* decision, many have criticized the initial reasoning of *Roe* which contributed to its fragility. Ruth Bader Ginsburg, a former Supreme Court justice and a hugely important advocate for women’s rights, “argued that it would have been better to take a more incremental approach to legalizing abortion...she suggested a ruling protecting abortion rights would have been more durable if it had been based on the Equal Protection Clause of the Constitution — in other words, if it had focused on gender equality

³⁶ “The History & Impact of Planned Parenthood”.

³⁷ *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. (2022).

³⁸ *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 12 (2022).

³⁹ “Tracking Abortion Bans Across the Country,” *The New York Times*, sec. U.S. <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html>.

rather than the right to privacy that the justices highlighted.”⁴⁰ Planned Parenthood and many others agree with her, and as the fight for safe and legal abortion continues in the streets and in the courts, the conversation centers around women’s rights now more than ever.

Reactions to the *Dobbs* case varied immensely, and although few believed the court would actually reverse *Roe*, the ruling didn’t necessarily come as a surprise for Planned Parenthood. Given the nature of the political landscape, the organization had been preparing for this moment for years. Planned Parenthood has focused on fundraising and increasing their services in states where abortion is legal. They’ve also been involved in electoral organizing which has resulted in many blue states cementing the right to abortion in their state constitutions.⁴¹ They’ve made significant progress, but the conservative, pro-life movement is not going down without a fight. Just recently, in April, 2023, a federal judge in Texas suspended the FDA-approved drug, mifepristone, which is a medical abortion pill. Per request by the Biden administration, the Supreme Court issued a stay on the Texas judge’s ruling, which effectively places the decision on hold temporarily.⁴² The case has been slowly working its way through the appellate court system, and is likely to appear before the Supreme Court in the near future.⁴³ Planned Parenthood continues to be active and vocal in its support for reproductive rights, but this ruling, like *Dobbs*, will undoubtedly have immense effects on the organization and those whom it serves.

⁴⁰ Frederic J. Frommer, “Justice Ginsburg Thought *Roe* Was the Wrong Case to Settle Abortion Issue,” *Washington Post*, 24 June 2022, <https://www.washingtonpost.com/history/2022/05/06/ruth-bader-ginsburg-roe-wade/>.

⁴¹ “The History & Impact of Planned Parenthood”.

⁴² “Court Allows Abortion Pill to Remain Widely Available While Appeals Proceed,” *SCOTUSblog*, 21 April 2023, <https://www.scotusblog.com/2023/04/court-allows-abortion-pill-to-remain-widely-available-while-appeals-proceed/>.

⁴³ Brendan Pierson, “US Appeals Court Backs Abortion Pill Restrictions; Supreme Court Appeal Planned,” *Reuters*, 16 August 2021, sec. United States, <https://www.reuters.com/world/us/us-appeals-court-rules-restrict-abortion-pill-use-2023-08-16/>.

Planned Parenthood is just one of many institutions with a rich history of interaction with the United States legal system. Since its inception, and over the subsequent century, the law, as reflective of the state and sentiment of society at a given time, has influenced the way in which Planned Parenthood has been able to operate. The law has shaped the organization's agenda and helped frame the direction of Planned Parenthood and the issues it chooses to address. In turn, Planned Parenthood has influenced public opinion and society, thereby assuming a certain amount of influence itself in terms of the legal system.

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