

## *Whole Woman's Health v. Hellerstedt*: Student Event Planning Guide

### Introduction

This semester, our nation's highest court will hear arguments in *Whole Woman's Health v. Hellerstedt*, a crucial case that will impact our ability to make personal decisions about our reproductive health for generations to come.

**Don't let the Supreme Court send us back decades. We invite you to join the Center for Reproductive Rights as we take action to protect abortion access.**

**Importantly, get ready to rally!** We're planning a huge rally at the Supreme Court in Washington, DC on March 2, 2016 at 8:00am. We will keep you in the loop as plans develop and we hope to see you there. In the meantime, we urge you to plan how you will use these resources to engage your community during this critical movement moment.

If you have questions or need more support, please don't hesitate to reach out to Nicole Tuszynski, Senior Manager of the Law School Initiative at [ntuszynski@reprorights.org](mailto:ntuszynski@reprorights.org). Thank you for all that you do to protect our reproductive rights.

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2. **Hosting an Event – FAQs, Helpful Hints & Timeline** - This guide will help you **get organized** and **host an engaging and well-attended event** on your campus. It provides a timeline for planning a panel (keynote or day-long convening), reaching out to speakers, and making sure the logistics run smoothly.
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- 5. Law 101: An Introduction to Domestic and International Legal Terms** - This document provides an introduction to the legal terminology in the “Law Student Guide.”

**Questions?** Please contact Nicole Tuszynski, Senior Manager of the Law School Initiative, at [ntuszynski@reprorights.org](mailto:ntuszynski@reprorights.org).

## A Student Guide: *Whole Woman's Health v. Hellerstedt*

This term, the Supreme Court will hear [\*Whole Woman's Health v. Hellerstedt\*](#), the most important abortion case since 1992's *Planned Parenthood v. Casey*. This guide will provide background on the case, with special attention to the legal questions facing the Court. We hope these questions spark discussion on your campus and in your community because, although this guide focuses on discrete legal questions, the decision in *Whole Woman's Health* will impact millions of women in Texas, and millions more around the country. If Texas House Bill 2 (HB2), the law at issue, goes into full effect, all but 10 abortion clinics in Texas - a state with 5.4 million women of reproductive age - will close.

### Legal Documents:

For your reference, all court filings including pleadings, motions, briefs, opinions and orders related to *Whole Woman's Health v. Hellerstedt* are accessible at [protectabortionaccess.org](http://protectabortionaccess.org).

### Timeline of the Case:

The Center for Reproductive Rights (the Center) filed a lawsuit on April 2, 2014 on behalf of several Texas clinics and physicians, as well as their patients, challenging the ambulatory surgical center (ASC) and admitting-privileges requirements of HB2. The plaintiffs argue that these requirements will dramatically reduce the number and geographic distribution of clinics in Texas, unduly burdening women's right to access safe and legal abortion services under the Fourteenth Amendment.

- **August 29, 2014:** Following a five-day trial, a federal district court [permanently blocked](#) both the ASC and admitting-privileges requirements statewide.
- **June 9, 2015:** The U.S. Court of Appeals for the [Fifth Circuit reversed that ruling](#), upholding the challenged requirements in large part. The judgment authorized Texas to enforce the requirements against all abortion facilities except as to a single doctor at a single clinic, and only so long as he was providing services to women from four counties of the Lower Rio Grande Valley.
- **June 29, 2015:** The Supreme Court granted an [emergency stay](#) of the Fifth Circuit's mandate ensuring the clinics could remain open while the litigation continued.
- **September 2, 2015:** The Center [petitioned the Supreme Court](#) to review the Fifth Circuit's decision and permanently block the ASC and admitting-privileges requirements.
- **November 13, 2015:** The Supreme Court [granted certiorari](#). Oral arguments will likely be scheduled for March 2016.

**Suggested Discussion Questions:**

1. *Planned Parenthood v. Casey* provides that a regulation is invalid if it has the **purpose** or **effect** of placing a **substantial obstacle** in the path of a woman seeking an abortion before viability.
  - a. What should a court consider in determining a law’s purpose?
  - b. What role should the effect of a law (in this case, the closing of more than 75% of the State’s clinics) have in demonstrating purpose?
  - c. What constitutes a substantial obstacle? Does the answer vary by context? And does it have to be a substantial obstacle for a woman, any woman, or a certain number, percentage, or subset of women?

2. In a recent decision striking down Wisconsin’s admitting-privileges requirement, a federal appellate judge stated:

“[t]o determine whether the burden imposed by the statute is ‘undue’ (excessive), the court must ‘weigh the burdens against the state’s justification, asking whether and to what extent the challenged regulation actually advances the state’s interests. If a burden significantly exceeds what is necessary to advance the state’s interests, it is ‘undue’ . . . which is to say unconstitutional.”  
*Planned Parenthood of Wis., Inc. v. Schimel*, No. 15-1736, 2015 WL 7424017, at \*11 (7th Cir. Nov. 23, 2015) (internal citation omitted).

Is this what *Casey* intended? What are the advantages or disadvantages of this approach?

3. Justices Kennedy, O’Connor, and Souter wrote in *Casey*:  
 “These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the 14th Amendment.” *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992).

Justice Kennedy’s commitment to protecting an expansive notion of liberty is also evident in his opinion in *Obergefell v. Hodges*. How might this play out in *Whole Woman’s Health*? How might equality figure in?

4. The plaintiffs have argued that targeted regulations of abortion providers (“TRAP” laws) like those challenged in *Whole Woman’s Health* violate the Equal Protection Clause. The district court concluded that abortion services in the State were extremely safe “before the enactment of House Bill 2,” indeed “much safer” than “common medical procedures not subject to such intense regulation.” Nonetheless, it dismissed plaintiffs’ equal

- protection claim. Consider how TRAP laws might fare under an equal protection analysis in lieu of or in addition to a due process claim.
5. Research indicates there are stark disparities in access to reproductive health care based on geography, race, and socio-economic status, among other demographic indicators. For example, African-American women are five times more likely than white women to die during childbirth. How might a decision in *Whole Woman's Health* impact disparities in access to health care? More broadly, what should the Court's role be in addressing larger societal inequalities?
  6. Plaintiffs contended at the District Court that the admitting-privileges requirement improperly delegates lawmaking authority to hospitals in violation of the Due Process Clause. What do you make of this improper delegation claim?

#### **Additional Resources:**

*Casey and the Clinic Closings: When "Protecting Health" Obstructs Choice*, by Reva Siegel and Linda Greenhouse

- Reva Siegel and Linda Greenhouse, *Casey and the Clinic Closings: When "Protecting Health" Obstructs Choice*, 125 YALE L.J. (forthcoming 2016), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2621839](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2621839).

*Abortion Exceptionalism and Undue Burden Preemption*, by Caitlin E. Borgmann

- Caitlin E. Borgmann, *Abortion Exceptionalism and Undue Burden Preemption*, 71 WASH. & LEE REV. 1047 (2014), available at <http://ssrn.com/abstract=2494528>.

*Abortion Goes on Trial Again*, by Richard Epstein

- Richard Epstein, *Abortion Goes on Trial Again Before the Supreme Court*, NEWSWEEK (Nov. 5, 2015), available at <http://www.newsweek.com/abortion-goes-trial-again-supreme-court-391013>.

*Nuestro Texas*

- Center for Reproductive Rights & the National Latina Institute for Reproductive Health, *Nuestro Texas* (Nov. 2013), available at <http://www.nuestrotexas.org/pdf/NT-spread.pdf>.

*State of the States: Fighting Back by Pushing Forward*

- Center for Reproductive Rights, 2015 legislation and litigation year-end report (Dec. 2015), available at <http://www.reproductiverights.org/document/2015-state-of-the-states-fighting-back-by-pushing-forward>.

## Hosting an Event – Helpful Hints

Hosting an event at your school is a great way to bring attention to important issues in your community. However, getting organized to put on an engaging and well-attended presentation or panel can be challenging. This guide provides some helpful tips to organizing a successful event at your school. For technical assistance, or to discuss your ideas, contact Nicole Tuszynski, Senior Manager of the Law School Initiative at the Center for Reproductive Rights ([ntuszynski@reprorights.org](mailto:ntuszynski@reprorights.org)).

### What Type of Event Should I Host?

#### Keynote Speaker

- **Participants:** 1 moderator; 1 speaker, 30-45 minute presentation, followed by Q&A
- **Goal:** Present an expert point of view on a single issue
- **Recommended Speakers:** Ideal speakers include law professors, practicing lawyers, advocates, providers, social science researchers, public health experts, etc.
- **Invitations:** An invitation to the speaker should take place 1-2 months prior to the event date – can you offer several dates to accommodate their schedule? Save the dates should be sent as soon as you know the date. Invitations to attend should be sent 1 month, 1 week, and 1 day before the event.
- **Budget Implications, \$:** Travel costs for keynote; promotional materials; light food/beverage

#### Panel Presentation

- **Participants:** 1 moderator; 3-5 speakers, 12-15 minute presentations, followed by Q&A
  - Asking a professor to moderate is a great way to ensure faculty participation!
- **Goal:** Create a dialogue between multiple points of view
- **Recommended Speakers:** Consider interdisciplinary speakers – having multiple perspectives on an issue will create an engaging dialogue
- **Invitations:** Invitations to the speakers should take place 3-4 months prior to the event date – make sure to brainstorm backups in case speakers are unavailable. Save the dates should be sent as soon as you know the date. Invitations to attend should be sent 1 month, 1 week, and 1 day before the event.
- **Budget Implications, \$\$:** Travel costs for speaker(s); promotional materials; light food/beverage

#### Day-Long Convening

- **Participants:** Full-day schedule can include a keynote, and 3-4 panels – each with a moderator and 4-5 panelists

- **Goal:** Create an opportunity to “dig deep” on an issue or topic. \*Note - faculty support recommended: requires significant planning, including substantive contributions by coordinators
- **Recommended Speakers:** Consider interdisciplinary speakers – having multiple perspectives on an issue will create an engaging dialogue
- **Invitations:** Invitations to the speakers should take place 4-6 months prior to the event date – make sure to brainstorm backups in case speakers are unavailable. Save the dates should be sent as soon as you know the date. Invitations to attend should be sent 1 month, 1 week, and 1 day before the event.
- **Budget Implications, \$\$\$:** Travel & lodging costs for panelists; promotional materials; catering for breakfast & lunch; often includes a reception
  - Offering lunch, CLE credit, or other special incentives is a great way to boost turnout

**Other:** Conference calls and webinars (try a free service like [Join.Me](https://join.me)), can be more budget-friendly and won't impose geographic restraints on speakers or attendees. You might also consider a guided discussion after a relevant film screening, such as *Obvious Child* or *Grandma* (note: must show films without charge for educational purposes).

### Suggested Timeline

- **2-6 Months: Get planning!**
  - Draft an event description and choose a title that reflects its content
  - Create a list of ideal speakers (make sure you have a few back-ups in mind) and identify relevant faculty on campus who might be willing to advise your group or moderate a panel
  - Draft and send invitations to your speakers – follow up with them if you don't hear back after a week
  - Track responses; book travel & lodging if necessary
  - Reserve a room for the event
- **1 Month:**
  - Promote, Promote, Promote! Email relevant listservs, post flyers, reach out to allies in the community
  - Reach out to panelists – circulate a finalized agenda and answer any logistical questions
    - You (and your speakers) may find it helpful to schedule a call with your speaker(s) in the coming weeks to discuss their presentations
  - Consider any materials you might want to share at the event, such as factsheets, case documents, petitions, etc. If you are fundraising to attend the Supreme Court

argument day rally, can you incorporate your fundraiser into this event and sign-ups for traveling to DC?

- Book catering, if necessary
- **1 Week:**
  - Promote, Promote, Promote – send reminders!
  - Create name tags, table tents, sign-in sheets, signage, advocacy materials, etc.
- **Day before:**
  - Re-circulate your contact information and the agenda to panelists and VIPS
  - Promote – one final email to your contacts and community
  - Confirm catering
  - Walk through your event space; test your technology
- **Day of:**
  - Double check technology, set up relevant signage, nametags, advocacy materials, etc.
  - Meet your speakers at the event space to review logistics, ideally an hour prior to the event
  - Greet guests and speakers & have a wonderful event
- **Day after:**
  - Thank-yous to your advisor(s), moderator(s), coordinator(s) and speaker(s)
  - If relevant, share event resources, such as recordings and advocacy materials, with participants and attendees

**Sample Email Invitation**

**To:**

**CC:**

**Subj: Invitation to Speak: Event, Date, Time, Location**

Dear Professor XX,

I'm writing to invite you to present at the upcoming panel "XXX," [co]sponsored by *ORGANIZATION(S)* on *DATE* at *SCHOOL* [note if there is any flexibility with the date]. This panel will explore *XXX*. We will begin the panel focusing on issues around *XXX* and then transition to *XXX*. Your fellow panelists will include: /OR We have extended invitations to the following potential fellow panelists:

- *Name, Title, Affiliation*
- *Name, Title, Affiliation*
- *Name, Title, Affiliation*

Given your experience at *XXX*, we think you would be a perfect fit to join the panel. We very much hope you can join us on the *DATE*. Please do not hesitate to be in touch if you have any questions or would like to talk in more detail about your role.

We look forward to hearing from you,

*Name*

*Title*

*Affiliation*

*Phone*

*Email*

## Sample Event Program

**“Event Title”**

**Date**  
**Room Number**

**Co-Sponsors**

XXX Organization  
XXX Organization

### Overview

*Description of Panel or Symposium:*

In 2016, the nation’s highest court will hear *Whole Woman’s Health v. Hellerstedt*, the Court’s first abortion case in almost a decade. At stake is access for millions of Texas women to a constitutionally guaranteed form of health care.

For decades, the Supreme Court has affirmed that the U.S. Constitution protects every woman's right to make her own personal decision about her pregnancy. However, Texas politicians have passed a law that buries women’s health clinics under requirements so onerous, 75 percent would close their doors. This lawsuit challenges the claim that Texas’s HB2 furthers the health and safety of pregnant women, and rather, constitutes an undue burden on women attempting to have an abortion and is therefore unconstitutional.

During “*Event Title*” our panelists will discuss ...

### Agenda

#### **Welcome**

**Welcome Address:** Name, Title, Affiliation

**Keynote Address:** [If Applicable, Name, Title, Affiliation]

*Timing*

**Panel 1: Title**

*Timing*

This panel will...

**Moderator:** Name, Title, Affiliation

**Panelists:**

- Name, Title, Affiliation
- Name, Title, Affiliation
- Etc.

**Break**

*Timing*

**Panel 2: Title**

*Timing*

This panel will...

**Moderator:** Name, Title, Affiliation

**Panelists:**

- Name, Title, Affiliation
- Etc.

**Lunch**

*Timing*

**Panel 3: Title**

*Timing*

This panel will ...

**Moderator:** Name, Title, Affiliation

**Panelists:**

- Name, Title, Affiliation
- Etc.

**Closing Remarks**

*Timing*

**Remarks:** Name, Title, Affiliation

**Reception to Follow**

Presenters and attendees are invited to enjoy libations and light hors d'oeuvres [time & location].

## Key Terms and Definitions

### Litigation

**Affidavit** – A written statement made voluntarily, made under oath and sworn to before a notary public or someone authorized to take oaths (like a County Clerk). This is a form of **evidence** – it is a rough substitute for oral **testimony** by a witness. In many courts, a **declaration** may be substituted for an affidavit; the big difference is that a declaration does not need to be sworn before a notary public.

**Amicus Curiae** (plural: *amici*) - Latin for "friend of the court," an organization or group of individuals permitted by a court to participate in a case, generally to a limited extent like filing a brief that presents an issue that might not otherwise come to the court's attention. An *amicus* brief is usually, but not always, submitted in support of one side.

**Answer** – Any pleading setting up matters of fact by way of defense. Under the Codes of Civil Procedure, the answer is the formal written statement made by a defendant setting forth the grounds of his defense; corresponding to what, in actions under the common-law practice, is called the "plea".

**Appeal (v.)** – A request to a higher court to review the decision of a lower court based on the "record" (see below) that was presented in the lower court. A party has a right to appeal to one appellate court. No new evidence is admitted on appeal; generally, the appealing party is arguing that the lower court applied governing law erroneously. The appellant must usually file a "notice of appeal," and then a brief making his or her arguments about why the lower court's decision was incorrect. The other party (respondent or appellee) usually files a responsive brief countering these arguments. The appellant then can counter that response with a final ("reply") brief. A court of appeal may request oral argument from the parties and any *amici*. The court may affirm the original ruling, reverse it, send it back to the trial court, or reverse in part and affirm in part. There is no deadline for the court's action.

**Appeal (n.)** - The name for the process of appealing, as in "she has filed an appeal." Timely resort by an unsuccessful party in a lawsuit or administrative proceeding to an appropriate superior court empowered to review a final decision on the ground that it was based upon erroneous application of law.

**Appellant** - The party who appeals a trial court decision it has lost.

**Appellee** - The name used for the party who has won at the trial court level, when the loser, (appellant) has appealed the decision to a higher court.

**“As-applied” Challenge** – There is much dispute (among academics, practitioners, and courts) about the difference between an “as-applied” and a “facial” challenge to a law. In its simplest terms, though, an “as applied” challenge is a challenge to a particular application or applications of a law or policy, rather than a challenge to the law or policy itself. A law or policy could be constitutional “on its face,” i.e., based on a reading of the law or policy, but still may be applied unconstitutionally.

**Cause of Action** – The fact or combination of facts that gives a person the right to seek judicial redress or relief against another. Also, the legal theory forming the basis of a lawsuit.

**Cert. Petition (Petition for a Writ of Certiorari)** - A party who wants the U.S. Supreme Court to review a decision of a federal court or of a state Supreme Court must file a "petition for a writ of certiorari." While parties in federal court have a right to have their appeal heard by one of the United States Courts of Appeals (also known as “Circuit Courts”), parties have no similar right to be heard by the U.S. Supreme Court. The Court chooses the cases it wants to hear by either granting or denying the “cert. petition.” Typically, a cert. petition is filed by the party that lost in the court below. After the cert. petition is filed, the party who won in the court below may either file an **opp. cert. (Brief in Opposition)** arguing that the Supreme Court should not grant the writ, or waive the right to do so, within thirty days. If an opp. cert. is filed, the petitioner has the right to file a reply brief countering the opp. cert. There is no deadline for the Court to act on a cert. petition.

**Complaint** - The first document filed with the court by a person or entity claiming legal rights against another. The party filing the complaint is usually called the **plaintiff** and the party against whom the complaint is filed is called the **defendant**.

**Defendant** – A person defending or denying; the party against whom relief or recovery is sought in an action or suit.

**Deposition** – The taking and recording of testimony of a witness under oath, by the opposing party, before a court reporter in a place away from the courtroom before trial.

**Discovery** – The efforts of a party to a lawsuit and its attorneys to “discover” evidence before trial through **depositions** of parties and potential witnesses, written **demands for production of documents, interrogatories** (written questions from one party to another and answers written under oath), **requests for admissions**.

**Docket Sheet** – A written list of judicial proceedings set down for trial in a court. In practice, a docket is a roster that the clerk of the court prepares, listing the cases pending trial. An appearance docket contains a list of the appearances in actions and a brief abstract of the successive steps in each case. A judgment docket is a listing of the judgments entered in a particular court that is available to the public for examination. Its purpose is to give official notice of the existence of liens or judgments to interested parties.

**En Banc** - Fr. "by the full court" "in the bench" or "full bench." When all the members of an appellate court hear an argument, they are sitting *en banc*. Refers to court sessions with the entire membership of a court participating rather than the usual quorum. U.S. courts of appeals usually sit in panels of three judges, but may expand to a larger number in certain cases. They are then said to be sitting *en banc*. An *en banc* court often sits to re-consider an order issued by a three-judge panel; a party that chooses to appeal a panel decision to the *en banc* court does so before, but not instead of, seeking U.S. Supreme Court review.

**Enjoin (v.)** - For a court to order that someone either do a specific act, cease a course of conduct or stop doing a certain act. The resulting order is called an **injunction**; it requires an entity to stop doing something (like enforcing a statute or withholding Medicaid funds from women seeking abortions) and refrain from doing it in the future. Very rarely, an injunction requires an entity to actually do something.

**Expert Witness** – A person who is a specialist in a subject who may present her/his expert opinion without having been a witness to any occurrence relating to the lawsuit or criminal case. It is an exception to the rule against giving an opinion in trial, provided that the expert is qualified by evidence of her/his expertise, training and special knowledge.

**Facial Challenge** – As noted above in the discussion of “as-applied challenge,” there is much academic dispute about the difference between an “as-applied” and a “facial” challenge to a law. But in its simplest terms, a “facial challenge” is a challenge in which a plaintiff asks a court to strike down a law in its entirety claiming that the law as it is written “on its face” is manifestly unconstitutional. This is in contrast to an “as applied” challenge, see above.

**Intervenor** – A person who voluntarily interposes in an action or other proceeding with the leave of the court. Generally, an intervenor asks to be allowed to participate in the case on the argument that they have interests that are directly impacted by the case but that their interests are not adequately represented by the parties that have already appeared.

**Judgment** – The final decision by a court in a lawsuit, criminal prosecution, or appeal from a lower court's judgment.

**Merits** – Referring to a judgment, decision or ruling of a court based upon the facts presented in evidence and the law applied to that evidence. A judge decides a case "on the merits" when he/she bases the decision on the fundamental issues and considers technical and procedural defenses as either inconsequential or overcome. Example: An attorney is two days late in filing a set of legal points and authorities in opposition to a motion to dismiss. Rather than dismiss the case based on this technical procedural deficiency, the judge considers the case "on the merits" as if this mistake had not occurred.

**Motion** - A formal request made to a judge for an order or judgment.

**Motion to Dismiss** – This motion asks the court to decide that a claim, even if true as stated, is not one for which the law offers a legal remedy. If granted, a motion to dismiss results in at least some part of the case ending.

**Order** - Every direction or mandate of a judge or a court which is not a judgment or legal opinion (although both may include an order) directing that something be done or that there is prohibition against some act.

**Permanent Injunction** - A final order of a court that a person or entity refrain from certain activities permanently or take certain actions until completed. A permanent injunction is distinguished from a "preliminary" injunction, which the court issues pending the outcome of a lawsuit or petition asking for the "permanent" injunction. A **preliminary injunction** maintains the status quo until the court makes a final ruling on the merits of a lawsuit. In order for the preliminary injunction to issue, the plaintiff must make a showing that, among other things, without the injunction the plaintiff will suffer irreparable injury, and that s/he has a likelihood of success on the merits. References to "a **P.I.**" generally mean a preliminary injunction.

**Plaintiff** – A person who brings an action; the party who complains or sues in a personal action and is so named on the record.

**Pleadings** – The formal allegations by the parties of their respective claims and defenses, for the judgment of the court.

**Plurality Opinion** – When no single opinion in a case in an appellate court is supported by a majority of the Justices, the opinion in support of the Judgment that has the most votes is called the "plurality opinion."

**Pro Hac Vice** – Latin "for this occasion"; referring to a lawyer who has not been admitted to practice in a certain jurisdiction but has been allowed to participate in a particular case in that jurisdiction.

**Record** – A written memorial of all the acts and proceedings in an action or suit in a court of record. The record is the official and authentic history of the cause, consisting in entries of each successive step in the proceedings, chronicling the various acts of the parties and of the court, couched in the formal language established by usage, terminating with the judgment rendered in the cause, and intended to remain as a perpetual and unimpeachable memorial of the proceedings and judgment.

**SCOTUS** – the Supreme Court of the United States.

**Settlement** – The act of adjusting or determining the dealings or disputes between persons without pursuing the matter through a trial. In civil lawsuits, settlement is an alternative to pursuing litigation through trial. Typically, it occurs when the defendant agrees to some or all of the plaintiff's claims and decides not to fight the matter in court. Usually, a settlement requires the defendant to pay the plaintiff some monetary amount. Popularly called settling out of court, a settlement agreement ends the litigation.

**Standing** -The right to pursue a lawsuit. A plaintiff must have “standing” to sue. In general, this means that the plaintiff has suffered actual injury, is alleging that the defendant is the “cause” of the injury, and is asserting a claim and request for relief that will “redress” the injury.

**Stay** - A court-ordered suspension of another court's judgment, usually granted pending appeal of the judgment itself. For example, the Fifth Circuit granted a stay of a permanent injunction restraining enforcement of a law that had been entered by a Texas district court; the result of the Fifth Circuit's decision was to allow enforcement of the law while the parties briefed the appeal.

**Summary Judgment** – When a party establishes through submission of sworn statements and/or admissions of the opponent, that there are no genuine issues of material fact that are in dispute and that the party is entitled to judgment as a “matter of law,” the court will grant “summary judgment,” avoiding a trial on the legal issues decided. A summary judgment is based upon a motion by one of the parties that contends that all necessary factual issues are settled or so one-sided they need not be tried. The motion is supported by declarations under oath, excerpts from depositions which are under oath, admissions of fact and other discovery, as well as a legal argument (points and authorities), that argue that there are no triable issues of fact and that the settled facts require a summary judgment for the moving party. The summary judgment process is designed to eliminate the need to try factual issues that are already settled.

**Temporary Restraining Order** - A temporary restraining order (TRO) is issued for the same reasons as a preliminary injunction, i.e., to maintain the status quo where the party requesting the

TRO is likely to succeed on the merits. However, TROs can be granted without notice to the opposing party and last for a short period of time, usually 10 days at the most.

### **Substantive Jargon**

**Ambulatory Surgical Center (ASC)** – a medical facility at which complicated outpatient surgical procedures may be performed under general anesthesia. Typically, state laws require ASCs to conform to strict standards for, among other things, physical configuration of operating rooms, recovery rooms, janitorial closets, and waiting areas; medical staff composition and nursing staff support; protocols to ensure sterility and infection control; and arrangements to respond to medical emergencies. These requirements are not medically justified for many, if not most, abortion care, because of the safety of abortions and the lower level of sedation used. ASCs are referred to in some states as **ambulatory surgical facilities (ASFs)**.

**Biased Counseling** – As used in the context of our work, biased counseling is state-mandated information that is intended to discourage a woman from choosing abortion and that is often irrelevant, unnecessary, misleading, or medically inappropriate. Statutes mandating biased counseling often are accompanied by delay periods of 24 or 48 or 72 hours and often require that the information be given by a physician, not simply a trained counselor, nurse, or other health practitioner. Biased counseling and mandatory delay requirements serve no actual health purpose and are intended only to discourage abortion as an option.

**Crisis Pregnancy Center (CPC)** – Throughout the United States (and all over the Internet), antiabortion groups have set up "crisis pregnancy centers." These centers follow a format that is deliberately designed to misinform and mislead young women. Going by the names such as Crisis Pregnancy Center, Pregnancy Aid, Birth Right, Open Door, or Pregnancy Counseling Center, these groups want to be a woman's first contact when she thinks she might be pregnant, so they can talk her out of considering abortion. Antiabortion pregnancy centers are listed in the yellow pages under "abortion alternatives" and they do not provide abortion. Many offer free pregnancy tests but do not have any medical staff on site, no doctors, no nurses, and no nurse practitioners. Most antiabortion centers will not give out information by phone, they insist you come into their office. Many women have reported waiting up to an hour for the results of a pregnancy test and being forced to watch antiabortion videos while they wait surrounded by antiabortion propaganda. Many of these centers are operated by churches or religious organizations.

**Emergency Contraceptive (EC)** – Sometimes called the "morning after pill," EC *prevents* pregnancy after unprotected sex via a course of hormonal contraceptive pills taken in one- or two-dose regimens. EC is most effective if taken within 24 hours after unprotected sex; however,

it can be effective for up to five days. Note the difference between medication abortion, which ends an already established pregnancy, and emergency contraception, which prevents pregnancy.

**FACE** – Freedom of Access to Clinic Entrances Act. Passed by Congress, this federal law imposes criminal and civil penalties on anyone who uses force or the threat of force to obstruct, intimidate or interfere with someone who is providing or receiving reproductive health services. It is enforced by the Department of Justice.

**Judicial Bypass/Waiver** – A judicial order that permits a minor to obtain an abortion without her parent’s knowledge or consent, despite a state law that forces parental involvement. The order technically “waives” the parental involvement requirement, allowing the minor to “bypass” the law.

**Mandatory Delay** – As used in our work, “mandatory delay” refers to a requirement that a woman delay her abortion a certain number of hours or days after receiving or being offered state-mandated information (biased counseling) designed to discourage abortion.

**Medication Abortion** – Medication abortion is a safe and effective non-surgical method of terminating early pregnancy. The most common medication abortion regimen used in the United States is a combination of mifepristone (also known as “Mifeprex” or “RU-486”) and misoprostol (also known as “Cytotec”). A number of states have passed laws that force women to use a regimen for medication abortion that was widely used before 2000, when the FDA approved Mifeprex for marketing in the United States, rather than the regimens that have been developed on the basis of scientific research and medical evidence in the decades since then. The regimen used before 2000 is often referred to as the “FPL protocol” or, less commonly, as the “FDA protocol.” Note the difference between medication abortion, which ends an already established pregnancy, and emergency contraception, which prevents pregnancy. Medication abortion is sometimes also referred to as the **abortion pill** or **non-surgical abortion**.

**Parental Involvement Laws** – As used in our work, this term refers to laws requiring young women to notify or obtain the consent of one or both parents in order to obtain an abortion.

**Rational Basis** – The lowest, weakest, level of scrutiny that courts apply to laws challenged on constitutional grounds. If the court decides to apply rational basis review or scrutiny, the plaintiff must show that the law is completely divorced from rationality; in some contexts, the courts have required plaintiffs to make the nearly-impossible showing that no conceivable state of facts could justify a law, but in other contexts, courts have invalidated laws under rational basis review after finding that the only basis for the challenged law was animus toward those who would be affected by the law.

**Refusal Clause** – Sometimes referred to as “conscience clauses,” a refusal clause allows entities or individuals that can demonstrate a religious objection to providing some type of service or medication—in our work, either contraceptives or provision of abortion—may escape a requirements to do so.

**Strict Scrutiny** – Refers to the highest degree of constitutional protection that is applied to restrictions on “fundamental rights,” like the right to free speech. When a law or policy is subjected to “strict scrutiny,” the state must establish that the law or policy is narrowly tailored to serve a compelling state interest, the most difficult test to meet. *Roe v. Wade* held that restrictions on the right to choose abortion were subjected to strict scrutiny. But the Supreme Court abandoned the strict scrutiny standard in *Planned Parenthood v. Casey*, adopting the undue burden test instead.

**TRAP** – Targeted Regulation of Abortion Providers. TRAP laws attempt to regulate the medical practices or facilities of doctors who provide abortions by imposing burdensome requirements that are different and more stringent than regulations applied to comparable medical practices. Physical plant regulations, a common feature of TRAP laws, can range from the width of doorways to hourly air exchange rates. Recently, anti-choice states have begun adopting a kind of TRAP law that imposes **admitting privilege requirements**, which oblige physicians who provide abortions to obtain admitting privileges at a nearby hospital. Not only are these requirements medically unjustified, given the safety of abortion, but they also create barriers to abortion when hospitals refuse to consider applications for admitting privileges submitted by abortion providers.

**Undue Burden** – The standard of judicial scrutiny—weaker than strict scrutiny—applied to restrictions on abortion, established in *Planned Parenthood v. Casey*. With rare exception, when courts apply the undue burden standard to anything less than a total, outright, ban on abortion, they uphold the challenged law. To establish that a regulation of abortion constitutes an “undue burden,” and is therefore unconstitutional, plaintiffs establish that the regulation places a **substantial obstacle** in the path of women seeking abortions.