NCJW
National Council of Jewish Women

BenchMark NCJW's Judicial Nominations Campaign

Reproductive Rights and the Supreme Court

The decision of whether and when to have children is a personal, private matter and an individual right. Over the years, reproductive rights have been advanced and rolled back in federal courts, impacting access to safe and legal abortion; insurance coverage for basic health care; when a woman may choose to terminate a pregnancy, and beyond. For better or for worse, the judges sitting in lifetime seats on the federal bench interpret the law and decide how it should be applied.

Though the public and the media tend to focus on a few high-profile cases each year heard by the US Supreme Court, every day critical decisions are also being made in federal district and circuit courts. Justice for all depends on a diverse, fair, and independent judiciary committed to core constitutional rights, including reproductive rights.

Let's explore how the United States Supreme Court has impacted reproductive rights:

- *Griswold v. Connecticut* (1965): Estelle Griswold, executive director of the Planned Parenthood League of Connecticut, was convicted under a Connecticut law for giving information, instruction, and other medical advice to married couples concerning birth control. The law prohibited any person from using "any drug, medicinal article or instrument for the purpose of preventing conception." In a 7-2 decision, the Supreme Court ruled that the law was invalid, finding that it infringed on the right to marital privacy established by the Bill of Rights. *Griswold* paved the way to **greater access to birth control for unmarried individuals.**

- *Eisenstadt v. Baird* (1972): After lecturing on birth control at Boston University, William Baird gave contraceptive foam to an unmarried college student and was arrested for violating Massachusetts law. In a 6-1 decision, the Supreme Court ruled that **unmarried individuals had the same rights as married couples to obtain birth control.**

- *Roe v. Wade* (1973): A Texas resident sought to obtain an abortion; however, Texas law prohibited abortions except when the life of the pregnant woman was endangered. In a 7-2 decision, the Supreme Court ruled that a **constitutional right to privacy includes the right to an abortion.**

- *Harris v. McRae* (1980): When Cora McRae, who was enrolled in New York's Medicaid program, sought to end her pregnancy, the New York City Health and Hospitals Corp. and others tried to stop the enforcement of the Hyde Amendment (which restricts federal Medicaid funding from paying for abortion except in cases of rape, incest, or when a woman's life is endangered). In a 5-4 decision, the Supreme Court **ruled that withholding Medicaid coverage for abortion was constitutional**, even when an abortion was needed to protect a woman's health. The decision chipped away at *Roe* and enabled Hyde-like bans to pervade other federal programs.

- *Planned Parenthood of Southeastern PA v. Casey* (1992): The Pennsylvania legislature amended its abortion control law in 1988 and 1989, creating new requirements before abortions could be performed. In a 5-4 decision, while the Supreme Court upheld *Roe*, it created a new tougher standard to determine the legality of laws restricting access to abortion, based on whether a law has the purpose or effect of imposing an "undue burden" on women. The decision **further eroded *Roe*.**

- *Stenberg v. Carhart* (2000): In a 5-4 decision, the Supreme Court **struck down Nebraska's so-called "partial-birth abortion" ban** because it placed an undue burden on a woman's right to abortion and did not allow an exception to preserve a woman's health.

- *Gonzales v. Carhart and Gonzales v. Planned Parenthood Federation of America* (2007): In a 5-4 decision, the Supreme Court reversed its decision in *Stenberg v. Carhart* and ruled that the federal **"Partial Birth Abortion Ban Act of 2003" was constitutional**. The Court decided that the law, which prohibited a method of abortion usually used in the second trimester, did not place an undue burden on a woman's right to abortion. The Court's decision undermined a core tenant of *Roe* -- that women's health must be paramount.

- *Burwell v. Hobby Lobby* (2014): Owners of a for-profit chain crafts store cited their religious objections to allowing their employees to take advantage of the birth control coverage benefit provided by the Affordable Care Act. In a 5-4 decision the Supreme Court ruled that Hobby Lobby and other **"closely held" corporations could have religious beliefs that should exempt them from covering birth control** as guaranteed in the health care law.

- *Young v. United Parcel Service (UPS)* (2015): Ms. Young, a UPS driver, was told by her doctor that she should not lift more than 20 pounds while pregnant. UPS refused, despite providing accommodations to other employees who were injured or who had disabilities. The Supreme Court, considering the Pregnancy Discrimination Act, ruled that it is **unconstitutional to provide accommodations to injured and disabled employees, but not provide accommodations for pregnant employees.**

- *Whole Woman's Health v. Hellerstedt* (2016): In 2013, Texas-passed a law mandating that abortion clinics adhere to ambulatory surgical center requirements and that clinic doctors have admitting privileges at local hospitals — neither requirement is deemed to be medically necessary by professional health associations and experts. In 2016, the **Supreme Court struck down these Texas requirements as unconstitutional**, finding that they created an undue burden on abortion access.

- *Zubik v. Burwell* (2016): The Supreme Court clarified its ruling in *Burwell v. Hobby Lobby*, holding that **employers must provide coverage for contraceptives**, either through their own healthcare coverage plans or through a third party in the case of a religious exemption.

- *National Institute of Family and Life Advocates (NIFLA) v. Becerra* (2018): The 2015 California Reproductive Freedom, Accountability, Comprehensive Care, and Transparency (FACT) Act required crisis pregnancy centers to post signs conveying how and where to access comprehensive reproductive health care. NIFLA, an organization that represents more than a thousand crisis pregnancy centers around the country, challenged the FACT Act as a violation of the First Amendment by requiring them to convey specific messages. The Supreme Court ruled 5-4 that the **FACT Act is a violation of free speech**, thus permitting crisis pregnancy centers to continue to mislead women.