



Legal battles over abortion heat up in the USA

Changes to Title X, several legal challenges, and a change to the Supreme Court composition could mean drastic changes for access to abortion in the USA. Susan Jaffe reports.

"We are the department of life...from conception until natural death, through all of our programmes", US Department of Health and Human Services (HHS) secretary Alex Azar said earlier this year at a forum sponsored by the conservative Family Research Council. Among other things, the group helps to organise pro-life rallies in Washington on the anniversary of the 1973 *Roe v Wade* Supreme Court decision that legalised abortion and prohibited states from restricting access.

The government's anti-abortion efforts have ignited lawsuits from Maine to California. Eventually, one or more of these cases are expected to reach the Supreme Court. With its newest arrival—Justice Brett Kavanaugh, whose nomination by Trump was championed by abortion opponents—the Supreme Court's ideological balance has now shifted towards a conservative majority. The change has raised opponents' hopes that a sympathetic court will diminish, if not overturn, *Roe*.

Late last week, lawyers for the HHS appealed decisions by two federal court judges in Oregon and Washington state to temporarily halt new administration rules that would limit the information abortion services that some federally funded health-care providers could be allowed to offer patients. Under the new rules, which would have taken effect on May 3, a "referral for abortion as a method of family planning is prohibited", an HHS spokeswoman said last week. Critics say the ban puts providers under a gag rule. It is one of the new conditions tacked onto the nearly US\$256 million in federal funding for some 4000 health clinics serving 4 million patients nationwide distributed under a family planning programme known as Title X, named after the section of the law Congress

passed in 1970 to create the programme. It is the only federal grant programme that subsidises family planning health-care services, including pregnancy testing, contraception information and supplies, testing and treatment for sexually transmitted infections, prenatal care, infertility

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services, cancer screenings, and family planning counselling. About 40% of patients receiving Title X services get them at Planned Parenthood clinics.

Trump had pledged to defund the organisation during his presidential campaign because it provides abortion services. Although that promise might have earned him the support of many socially conservative voters, the new rules would not affect funding for abortions, because the 1976 Hyde Amendment prohibits federal money from being used to pay for abortions (except in cases of rape, incest, or when the pregnancy endangers the mother's life). Should the new HHS rules for Title X services take effect, discussion of the abortion option by health-care providers receiving Title X funding would be prohibited as well.

In Portland, Oregon, the Planned Parenthood Federation of America, the American Medical Association, and 22 states filed lawsuits in March to block the rules shortly after the administration finalised them. In Washington, the state attorney general and the National Family Planning & Reproductive Health Association, which represents publicly funded family planning providers, filed a similar suit. Other cases are pending in Maine and California.

"We want to block any attempt by anyone, the federal government, insurance companies, anybody who wants to tell a physician what they can and cannot say to a patient", Barbara McAneny, a New Mexico oncologist and president of the American Medical Association, told *The Lancet*.

If the lawsuits are unsuccessful and the new rules take effect, Planned Parenthood president Leana Wen told *The Lancet* that the clinics will refuse the federal money rather than comply with the gag rules. Several governors have said their states will do the same. "For us, this is not a choice", said Wen, who is also an emergency medicine physician. "Planned Parenthood will never force our doctors and nurses to compromise their ethics, which is why we said from the very beginning that we cannot accept gag funds."

She acknowledged that refusing the Title X funds could jeopardise patients' health. By issuing what she called "these unethical and dangerous rules", the Trump administration is harming patients, she said. "We're talking about 4 million people who depend on Title X for their care." Because many patients have inadequate or no health insurance, Wen said Planned



Joshua Roberts/Reuters

Parenthood clinics are their only source of medical care, particularly in rural areas. The clinics use Title X money to provide basic primary and preventive care, birth control counselling and supplies, vaccinations, breast and cervical cancer screenings, testing and treatment for sexually transmitted diseases, and other services.

The consequences of losing that money are not hard to imagine for Kami Geoffray, chief executive officer of the Women's Health and Family Planning Association of Texas. The non-profit received \$14 million this year in federal Title X funding, the second largest award in the USA. The association distributes the funds to a network of 38 public and private agencies operating nearly 150 clinics across the state. After the Texas legislature cut state family planning funds by two thirds in 2011, Geoffray said some clinics reduced staff and some closed. "We saw unintended pregnancies increasing, maintenance of contraceptive methods decreasing, increased use of less effective contraceptive methods, and increases in Medicaid births, which are obviously a strain on federal and state funding", she said.

California's Essential Access Health received the largest Title X grant, \$21 million, and is also a plaintiff along with the state's attorney general in a lawsuit seeking to block the new Title X rules on behalf of its 1 million low-income patients. In this lawsuit, ten states, led by Ohio's attorney general, are supporting the Trump administration. In their *amicus curiae* (friend of the court) brief, they argue that "the new rules help preserve broad support for Title X by keeping a healthy distance between the consensus supporting family-planning services and the controversy over abortion". In the event that the court overturns the rules, they say that decision should apply only in California, not to "Ohio or in other states that welcome the updated regulations".

Another Trump administration rule finalised by the HHS last week allows broadly defined health-care workers to refuse to serve patients on the basis of religious or moral grounds. The objectionable care

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can include abortion procedures and protects health-care providers as well as non-medical, ancillary employees including receptionists and clerical workers. It applies to providers whose patients have health insurance under Medicaid, Medicare, or other federal health programmes. Administration officials describe it as "the conscience rule" that is intended to protect individuals and health-care facilities from discrimination. "This rule ensures that health-care entities and professionals will not be bullied out of the health-care field because they decline to participate in actions that violate their conscience, including the taking of human life", said the director of the HHS Office for Civil Rights, Roger Severino. Lawyers representing the city and county of San Francisco have sued Azar and the Trump administration, claiming the new rule will have the opposite effect by increasing discrimination and disparities in health care. It "requires the City and County of San Francisco... to prioritise providers' religious beliefs over the health and lives of women, lesbian, gay, bisexual, or transgender people, and other medically and socially vulnerable populations", according to the city's lawsuit. San Francisco could lose almost \$1 billion in Medicare, Medicaid, and other federal payments for health-care services if the HHS found that health-care providers were forced to participate or assist in health care despite their religious or moral objections.

As these controversies unfold in the federal courts, legal battles directly affecting abortion access continue on the state level. Nearly all states have laws relating to abortion, according to an analysis by the Guttmacher Institute. For example, 43 states prohibit abortions after either fetal viability or 20 or 24 weeks of pregnancy (except where the mother's health is in danger). A handful of states also prohibit abortion once a fetal heartbeat is detected, which can happen as early as 6 weeks, when some women might not even know they are pregnant.

The day Ohio's governor signed its so-called heartbeat law in April, the American Civil Liberties Union (ACLU) tweeted, "We'll see you in court". The ACLU will be joined by Planned Parenthood and Preterm, a Cleveland abortion clinic, to sue to block the heartbeat law, which takes effect in July.

"It is not constitutional and the state knows this", said Chrise France, executive director of Preterm, one of the seven clinics left in the state. "Their goal is to get something to the Supreme Court to overturn Roe."

Ohio Attorney General Dave Yost welcomes the opportunity to defend the state law and perhaps topple the 1973 *Roe v Wade* decision. "In the last 46 years, the practice of medicine has changed", he said. "Science has changed. Even the point of viability has changed. Only the law has lagged behind."

Wen says Planned Parenthood and its supporters will protect Roe "on all fronts: We are fighting back in the courts, we are fighting back in Congress and in state legislatures all across the country", she said, noting that one in four women in the USA will have an abortion in their lifetime. "The public is with us when it comes to defending access to safe legal abortion, which people understand is part of the full spectrum of reproductive health care, which is health care."

Susan Jaffe