

## THE LANDSCAPE OF STATE ANTI-ABORTION LEGISLATION\*

RACHEL SUSSMAN\*\*

**Rachel Sussman:** Thanks, everybody, for having me. I'm thrilled to be here. I spend most of my time reading bills that intend to restrict access to reproductive healthcare, and taking a break from that, stepping back and hearing from others in this environment, is really important. So I'm thrilled to be here, thank you.

To start, I'll make a quick note about Planned Parenthood. I think we exist in a unique space with regard to advocacy. We are a healthcare provider, so we have hundreds of health centers across the country. One in five women in the United States will visit a Planned Parenthood at some point in her life.<sup>1</sup> So our advocacy and the way we move forward, whether through litigation or public policy and legislation, first and foremost focuses on our patients and how we can serve them best.

So that gives us a unique platform. It also can be challenging because not only are we advocating for our patients, but often we must advocate for ourselves as a service provider in order to keep our doors open.

I will focus on the legislative landscape for reproductive health issues. With the change in control of state legislatures and governors' offices in the 2010 elections came a complete onslaught of efforts to restrict reproductive health services. The floodgates opened.

Arizona is a good example. When Janet Napolitano was in office as governor, she was

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1 *Planned Parenthood at a Glance*, PLANNED PARENTHOOD, <http://www.plannedparenthood.org/about-us/who-we-are/planned-parenthood-at-a-glance> [<http://perma.cc/BFL9-BDMN>] (last visited July 19, 2014).

busy. Veto, veto, veto, veto, right? She had to veto a lot of bad bills. But as soon as she left in 2010, all of the restrictions around reproductive health care services started passing and getting signed.<sup>2</sup> There were hundreds and hundreds of bills. Tracking them alone is a challenge. So to then try to stop them through advocacy in such hostile environments can be very difficult.

Because the environment is so hostile, one tactic that Planned Parenthood and other advocacy organizations has used is simply elevating the fact that this barrage of restrictions is happening. We did this by saying at a fundamental level, our opposition's main goal is trying to chip away at *Roe v. Wade* through both public policy and public opinion. And so this opening of the floodgates and moving all of these bills represents their effort of chipping away in earnest.

Historically, we had seen many bills that attempted to create barriers for women trying to access abortion. So, for example, we have seen bills that instituted a 24-hour waiting period, or requirements that women go through counseling and hear information that either isn't true or is biased.

What I think switched in 2010—and Bebe Anderson alluded to this in talking about the opposition's efforts to push the frame of keeping women safe<sup>3</sup>—is they started to get into the business of actually regulating healthcare. And through these regulations, which I'm going to talk about in a minute, they were in effect trying to shut down health centers. The regulations may be impossible to comply with, or have absolutely no impact in terms of actual medical safety and therefore may be inappropriate to comply with, or force doctors to actually provide bad medicine.

Right now there are five main categories of bills in my world. The restrictions I was just mentioning that attempt to regulate and shut down health centers are in a broader rubric of what I call "TRAP" bills. "TRAP" stands for Targeted Restrictions on Abortion Providers. These are all sorts of laws that seek to regulate the physical building of a health center or create staffing requirements. And many of these bills literally would require health centers to build hospital-style operating rooms even in a health center that only offers medication

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2 See *New Abortion Restrictions: Arizona Women Have Fewer Health Care Options*, PLANNED PARENTHOOD (Aug. 18, 2011), <http://www.plannedparenthood.org/planned-parenthood-arizona/newsroom/press-releases/new-abortion-restrictions-arizona-women-have-fewer-health-care-options> [<http://perma.cc/334R-V6W6>].

3 Bebe J. Anderson, *Litigating Abortion Access Cases in the Post-Windsor World*, 29 COLUM. J. GENDER & L. 143 (2015).

abortion. So a woman may decide to experience the abortion through medication and the provider is just handing her the pills, yet they have to be in an operating room. Right? So on its face, it sounds ridiculous.

The challenge is the framing—most people want everyone to have the best and safest healthcare. Part of our challenge is that the fight over regulation of healthcare is happening at a time where we also have a national conversation about access to healthcare and there are a lot of concerns that people generally have in regards to how they're experiencing their healthcare. So when all of a sudden people are talking about more regulation—making it safer, making it better—it reassures those anxieties. That is the environment we have to work in, which is extremely challenging.

We are still forging forward, and I think Texas is a great example of people really seeing what these bills are intended to do, and seeing that the result is restricted access.<sup>4</sup> On a fundamental level, health centers close down, and women have less access to care. And when women have less access to care, they are forced to seek methods that are less safe. It actually goes against what the opposition is proposing, right? The story can be told. But it's a long story, and sometimes in the public sphere or in the media, you don't have a really long time to tell it.

The other area where we're seeing restrictions and a doubling down on them is around actual banning of abortions. In the past couple of years, states have tried to ban abortion at six weeks, twelve weeks.<sup>5</sup> There's been an escalation of banning abortion at twenty weeks, which has been through the courts in some states.<sup>6</sup> But for many women who are seeking abortion at that point in pregnancy, it is usually due to a complication or something going wrong with the pregnancy. And even in that context, it's a hard fight. Getting women to come forward, to tell their story, in some ways—and I know we're going to get to this—has been far more challenging in the context of access to abortion than I think it has been for

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4 See, e.g., Editorial, *Real Goal of Abortion 'Limits': Bans*, N.Y. TIMES (May 10, 2014), <http://www.nytimes.com/2014/05/11/opinion/sunday/real-goal-of-abortion-limits-bans.html> [<http://perma.cc/W79G-FRDK>].

5 See, e.g., James MacPherson, *North Dakota Appeals After Judge Overturns Law that Bans Abortions If Fetal Heartbeat Detected*, U.S. NEWS (May 14, 2014, 5:19 PM), <http://www.usnews.com/news/us/articles/2014/05/14/nd-appealing-judges-ruling-on-6-week-abortion-ban> [<http://perma.cc/9YG2-V9S2>] (six-week ban); *Arkansas Approves Strictest Abortion Ban in US*, BBC (Mar. 7, 2013, 11:53 AM), <http://www.bbc.com/news/world-us-canada-21705086> [<http://perma.cc/VQ83-C42W>] (twelve-week ban).

6 See Paige Winfield Cunningham, *Push Continues for 20-Week Abortion Ban*, POLITICO (Feb. 14, 2014, 1:31 PM), <http://www.politico.com/story/2014/02/push-continues-for-20-week-abortion-bans-103535.html> [<http://perma.cc/JQ72-2R7E>].

the gay rights community and marriage.

I know I'm running low on time so I will just mention a few other categories of restrictions. We are seeing an escalation of waiting periods. We no longer see twenty-four-hour waiting periods; we're seeing forty-eight-hour and seventy-two-hour waiting periods.<sup>7</sup> It's sad when you say, "Oh, I wish I were seeing twenty-four-hour waiting periods." In some states there are actually seventy-two-hour waiting periods on the books. And for women who have to arrange childcare and travel, seventy-two hours can easily turn into a week.

And then I think we're going to get to talk about this more later, so I will just mention the refusal context. For years we have seen laws on the books that either are expansions of Religious Freedom Restoration Acts or are just straight-up refusal laws that allow individuals or entities to refuse to provide reproductive health care services.<sup>8</sup> I think these barriers will continue to exist, and I think we'll hopefully have collaboration on fighting it as we move forward.

*Here, the panel turned to questions about the generational aspect of the work, movement priorities, and connections across reproductive rights and marriage equality work.*

**Question 1:** One of the things that I'm really interested in is the generational aspect of this work. Because while I think that there is a lot of similarity between LGBT rights and reproductive rights, there's a huge difference in terms of how the younger generation is seeing these issues. Because one of the biggest differences is that young people are seriously in favor of looking at sexuality and sexual orientation in an entirely different way from the way previous generations did. But that's not the case around abortion. In fact, what you're seeing is the younger generation getting more and more conservative around the issue of abortion. And I think that that's one of the big differences. So my question really is to Jessica around how you're having a values debate with a much younger generation that

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7 See *Mandatory Waiting Period and Information Requirements for Women Seeking Abortions*, KAISER FAMILY FOUND., <http://kff.org/womens-health-policy/state-indicator/mandatory-waiting-periods/> [<http://perma.cc/M7LR-9K5D>] (last visited July 19, 2014).

8 See, e.g., *Refusal to Provide Medical Services*, NARAL PRO-CHOICE AM., <http://www.prochoiceamerica.org/what-is-choice/fast-facts/refusal-to-provide-medical.html> [<http://perma.cc/8ZDF-DMN3>] (last visited July 19, 2014); Reid Wilson, *Mississippi Passes Arizona-Style Religious Freedom Bill*, WASH. POST (Apr. 1, 2014), <http://www.washingtonpost.com/blogs/govbeat/wp/2014/04/01/mississippi-passes-arizona-style-religious-freedom-bill/> [<http://perma.cc/6EE2-4VCR>].

sees abortion very differently.

**Question 2:** On this question of what's next, what do you all hope are the priorities in ten years in the reproductive and LGBT rights movements?

**Question 3:** I have a question for my colleagues in the equality field. So everybody this morning from the choice side has talked about how once we won the federal rights in *Roe v. Wade* they were then subsequently chipped away at. Poor women, minors, lots of other women were denied the right for a couple of decades and still are. And my question for you guys is, have you already been giving some thought to what are your equivalents to a chipping away, because in that case, there's an actual service that can be denied, and so I'm just trying to be thoughtful about that. But I'm curious if you have ideas about that.

**Suzanne Goldberg:** When you think about the work that you have done, in whichever areas you have focused, how do you see the connections across marriage equality work and LGBT work generally, as well as reproductive rights and freedom work? Some of the disconnections are clear in terms of the challenges that reproductive rights have faced in recent years and the relative successes that marriage equality work has faced. But there are all sorts of disconnections and connections and so I welcome you all to speak about anything you like.

**Rachel Sussman:** I wanted to talk a little bit about the public opinion pieces raised. One of the fundamental things that on a daily basis slightly confuses me is that an overwhelming majority of the public supports *Roe v. Wade*.<sup>9</sup> They support abortion staying safe and legal, and actually, those numbers don't really shift with millennials. I do completely agree that our dialogue and the way we've talked about either access to abortion or just about making private medical decisions has to change. And I think shifting how we talk to younger people and how we engage them is something that the reproductive health community is actively focused on.

But the reality is, the people are there. They generally support access to abortion. And so why is that not always translating? And I think there have been snippets of moments, like we've seen in Texas and in North Carolina, where people are so frustrated that they come out and actively oppose and push back against restrictions. But there are a ton of places where that's not happening.

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9 See *Roe v. Wade at 40: Most Oppose Overturning Abortion Decision*, PEW RESEARCH: RELIGION & PUB. LIFE PROJECT (Jan. 16, 2013), <http://www.pewforum.org/2013/01/16/roe-v-wade-at-40/> [<http://perma.cc/6BMG-8QAB>].

And I think the outrage that we just saw in Arizona around refusal for the LGBT community doesn't have an equivalent in the reproductive rights community.<sup>10</sup> John McCain isn't coming out and saying these abortion restrictions are wrong. Right? It is still a very polarizing conversation to the extent that it's hard to get folks to come out and honestly say what they believe. I mean, I just strongly believe there are a lot of people out there, including elected officials, who basically support *Roe* and access to abortion and who do not come out and stand up and fight for it. And that is, I think, a challenge for our community, because it seems like one party's thing is that they're pushing to show they are different from the other party. But the people's reluctance to show their support for safe and legal abortion is not really changing.

Another example is Mississippi, where they defeated a personhood ballot initiative.<sup>11</sup> I mean, we won in Mississippi. Right? So the fact is that when we're able to engage in a conversation with the public on this issue, when we're able to talk about what it actually means and the impact for women and their families, we win. But frankly, the amount of money that it cost, and the length of time that we had to engage the public for one ballot initiative in Mississippi, is very different from the situation when you're facing an entire legislative session. For example, in Missouri, there are twenty-six bills attempting to restrict reproductive health access just this session.<sup>12</sup> So who are you talking to about what, right? So I think those are some of our challenges.

One similarity that I see is that the group that was pushing the LGBT refusal bill in Arizona was the Center for Arizona Policy. That same group has pushed and passed—I can't even count how many—restrictions on reproductive healthcare in Arizona.<sup>13</sup> So the reality is that our opposition is the same for both LGBT rights and reproductive healthcare,

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10 See Fernanda Santos, *Arizona Governor Vetoes Bill on Refusal of Service to Gays*, N.Y. TIMES (Feb. 26, 2014), <http://www.nytimes.com/2014/02/27/us/Brewer-arizona-gay-service-bill.html> [http://perma.cc/S9P-MX5T].

11 See Aaron Blake & Rachel Weiner, *Ohio Repeals Law Restricting Unions; Miss. Blocks 'Personhood' Amendment*, WASH. POST (Nov. 8, 2011), [http://www.washingtonpost.com/politics/governors-races-pale-next-to-issues-votes-in-miss-ohio/2011/11/08/gIQAbtIP3M\\_story.html](http://www.washingtonpost.com/politics/governors-races-pale-next-to-issues-votes-in-miss-ohio/2011/11/08/gIQAbtIP3M_story.html) [http://perma.cc/6DFF-VX4Y].

12 See Michael Muskal, *Missouri Is Latest Battleground over Abortion Rights, Restrictions*, L.A. TIMES (May 15, 2014, 9:37 AM), <http://www.latimes.com/nation/nationnow/la-na-nn-abortion-missouri-20140515-story.html> [http://perma.cc/927Y-N9R7].

13 See Cathi Herrod at Helm of Conservative Center for Arizona Policy, *Guiding Lawmakers*, ARIZ. DAILY SUN (Mar. 2, 2014, 7:30 AM), [http://azdailysun.com/news/local/state-and-regional/cathi-herrod-at-helm-of-conservative-center-for-arizona-policy/article\\_fabe26a2-a1ba-11e3-9a43-0019bb2963f4.html](http://azdailysun.com/news/local/state-and-regional/cathi-herrod-at-helm-of-conservative-center-for-arizona-policy/article_fabe26a2-a1ba-11e3-9a43-0019bb2963f4.html) [http://perma.cc/LY7F-44AK].

and that could create opportunities for collaboration.