



LIFE LITIGATION REPORT—MARCH 2020

Steven H. Aden, *J.D.*
Chief Legal Officer/General Counsel
Steven.Aden@aul.org

U.S. Supreme Court

Abortion clinic/provider regulations/Third-party standing

- **Louisiana-** **June Medical Services v. Russo* (No. 18-1323) (admitting privileges); and **June Medical Services v. Russo* (No. 18-1460) (abortion provider standing). Petition and cross-petition granted, oral argument heard Mar. 4, 2020; decision expected before the end of the term.

Informed consent

- **Indiana-** *Box v. Planned Parenthood of Indiana & Kentucky* (No. 18-1019) (ultrasound) (originally conferenced Oct. 1, 2019, now apparently held)

Parental involvement

- **Indiana** – *Box v. Planned Parenthood of Indiana & Kentucky* (No. 19-816) (application of *Hellerstedt* analysis to parental involvement law). Set for conference of Mar. 27, 2020.

Clinic licensing

- **Indiana** – *Hill v. Whole Woman’s Health Alliance* (No. 19-743) (application of *Hellerstedt* analysis to decision denying abortion clinic a license). Response requested and filed; set for conference of Mar. 27, 2020.

Free speech

- **Illinois-** *Price v. City of Chicago* (No. 18-1516) (“bubble zone” law) (originally conferenced Oct. 1, 2019, now apparently held)

Rights of conscience

- **Pennsylvania** - *Little Sisters of the Poor v. Pennsylvania*, 19-431 (constitutionality of expanded exemptions from HHS birth control mandate, and standing of Little Sisters) & *Trump v. Pennsylvania*, 19-454 (constitutionality of expanded exemptions from HHS birth control mandate). Petitions granted and cases scheduled for oral argument on Apr. 29, 2020; decision expected by the end of the term.

Federal Courts of Appeals

Abortion access in custody

- **D.C.-** *Garza v. Azar* (D.C. Cir. No. 18-5093) (final injunction of 6/14/19 requiring Office of Refugee Resettlement to facilitate access to abortion; time for petition for certiorari extended to Nov. 8, 2019 allowed to lapse. CASE CONCLUDED)

Gestational limits

- **Arkansas-** *Hopkins v. Jegley* (CA8 No. 17-2879) (dismemberment) (awaiting decision from oral argument on December 13, 2018; supplemental briefing received on effect of decision in *Box v. Planned Parenthood of Indiana & Kentucky, Inc.*, S. Ct. No. 18-483 (May 28, 2019) (per curiam) (upholding Indiana law requiring fetal remains to be buried or cremated but denying review of law barring abortions based on fetus's race, sex, or disability))
- **Arkansas-** *Little Rock Family Planning Services v. Rutledge* (CA8 No. 19-2690) (18-week limit) (pending oral argument)
- **Kentucky-** *EMW Women's Surgical Center v. Beshear* (CA6 No. 19-5516) (dismemberment) (argued Jan. 29, 2020, pending decision)
- **Mississippi-** *Jackson Women's Health v. Currier* (CA5 No. 18-60868) (15-week limit) (judgment and final injunction affirmed Dec. 13, 2019; petition for rehearing en banc denied Jan. 17, 2020. Petition for certiorari due Jun. 15, 2020 per Sup. Ct. Order dated Mar. 19, 2020 (adding 60 days to time to petition for writ of certiorari.)
- **Mississippi-** *Jackson Women's Health v. Currier* (CA5 No. 19-60455) (heartbeat) (judgment and final injunction affirmed Feb. 20, 2020. Petition for certiorari due Jul. 25, 2020 per Sup. Ct. Order dated Mar. 19, 2020 (adding 60 days to time to petition for writ of certiorari).)
- **Missouri-** *Reproductive Health Services of Planned Parenthood of the St. Louis Region, Inc. v. Parson* (CA8 No. 19-2882) (8-week, 14-week, 18-week, 20-week) (pending oral argument)
- **North Carolina-** *Bryant v. Woodall* (CA4 No. 19-1685) (20-week limit) (pending oral argument)
- **Texas-** *Whole Women's Health v. Paxton* (CA5 No. 17-51060) (dismemberment) (case stayed pending disposition of *June Medical Services v. Russo*)

Abortion clinic/provider regulations

- **Kentucky-** *EMW Women's Surgical Center v. Glisson* (CA6 No. 18-6161) (transfer agreement) (oral argument held Aug. 8, 2019; pending decision)
- **Louisiana-** *Planned Parenthood Gulf Coast v. Russo* (CA5 No. 18-30699) (clinic licensing) (oral argument held Jan. 9, 2019)

Abortion funding

- **South Carolina-** *Planned Parenthood South Atlantic v. Baker* (CA4 No. 18-2133) (Medicaid) (affirmed by decision Oct. 29, 2019; petition for writ due in S. Ct. Mar. 27, 2020)
- **Texas-** *Planned Parenthood of Greater Texas Family Planning & Preventative Health Services v. Phillips* (CA5 No. 17-50282) (Medicaid) (rehearing *en banc* held May 14, 2019; pending decision)

Chemical Abortion (RU-486)

- **Wisconsin-** **Planned Parenthood of Wisconsin v. Kaul* (CA7 No. 19-1835) (physician-only requirement, same physician must examine and prescribe pill, telemedicine ban) (injunction affirmed Nov. 7, 2019; petition for writ due in S. Ct. Apr. 7, 2020)

Fetal remains

- **Arkansas-** **Hopkins v. Jegley* (CA8 No. 17-2879) (oral argument held Dec. 13, 2018; in supplemental briefing re effect of SCOTUS *Box* opinion)
- **Texas-** *Whole Women's Health v. Phillips* (CA5 No. 18-50730) (oral argument held Sep. 5, 2019; decision pending)

Informed consent

- **Kentucky-** *EMW Women's Surgical Center v. Beshear* (CA6 Nos. 17-6151, 17-6183) (ultrasound) (law affirmed against First Amendment challenge; petition for writ of certiorari (S. Ct. 19-417) denied Dec. 9, 2019)

Omnibus challenge to abortion regulations

- **Indiana-** **Whole Woman's Health Alliance v. Hill* (CA7 No. 19-2051) (preliminary injunction allowing WWH to operate without a license upheld; petition for writ of certiorari filed (S. Ct. 19-743) and pending)
- **Louisiana-** *June Medical Services v. Gee* (CA5 No. 19-30353) (mandamus denied by 5th Cir. Oct. 18, 2019)

Parental notice

- **Alabama-** *Reproductive Health Services v. Bailey* (CA11 No. 17-13561) (oral argument held Apr. 10, 2018; pending decision)

Physician only laws

- **Arkansas-** **Little Rock Family Planning Services v. Rutledge* (CA8 No. 19-2690) (oral argument pending)
- **Wisconsin-** **Planned Parenthood of Wisconsin v. Kaul* (CA7 No. 19-1835) (for chemical abortion) ((injunction affirmed Nov. 7, 2019; petition for writ due in S. Ct. Apr. 7, 2020)

Prenatal non-discrimination

- **Arkansas- *Hopkins v. Jegley** (CA8 No. 17-2879) (sex) (oral argument held Dec. 13, 2018; in supplemental briefing re effect of SCOTUS *Box* opinion)
- **Arkansas- *Little Rock Family Planning Services v. Rutledge** (CA8 No. 19-2690) (Down syndrome) (pending oral argument)
- **Ohio- Preterm-Cleveland v. Himes** (CA6 No. 18-3329) (Down syndrome) (oral argument held before en banc court Jan. 29, 2019; pending decision)

Title X

- **California- Essential Access Health, Inc. v. Azar** (CA9 No. 19-15979); and *California v. Azar* (CA9 No. 19-15974); together with *Oregon v. Azar/AMA v. Azar* (CA9 No. 19-35386) and *Washington v. Azar/National Family Planning & Reproductive Health Association* (CA9 No. 19-35394) (*en banc* court of appeals ruled 7-4 on Feb. 24, 2020 that Protect Life Rule was constitutional and not a violation of the Administrative Procedure Act)
- **Maryland- Mayor and City Council v. Azar** (CA4 No. 19-1614 and No. 20-1215) (pending petition for initial rehearing en banc filed Mar. 6, 2020 seeking circuit split w/ 9CA)
- **Maine- Family Planning Association of Maine v. U.S. Department of Health & Human Services** (CA1 No. 19-1836) (voluntarily dismissed by plaintiff Oct. 22, 2019; CASE CONCLUDED)

Federal District Courts

Gestational limits

- **Alabama- Robinson v. Marshall** (M.D. Ala. No. 19-365) (ban with narrow exceptions)
- **Georgia- SisterSong Women of Color Reproductive Justice Collective v. Kemp** (N.D. Ga. No. 19-2973) (heartbeat)
- **Indiana- Bernard v. Individual Members of the Indiana Medical Licensing Board** (S.D. Ind. No. 19-1160) (dismemberment)
- **Kentucky- *EMW Women's Surgical Center v. Beshear** (W.D. Ky. No. 19-178) (heartbeat)
- **Ohio- Planned Parenthood Southwest Ohio Region v. Yost** (S.D. Ohio No. 19-118) (15-week)
- **Ohio- Preterm-Cleveland v. Himes** (S.D. Ohio No. 19-360) (heartbeat)
- **Utah- Planned Parenthood Association of Utah v. Miner** (D. Utah No. 19-238) (18-week)

Abortion funding

- **Arkansas- Planned Parenthood v. Gillespie** (E.D. Ark. No. 15-566) (Medicaid)

- **Louisiana-** *Planned Parenthood Gulf Coast v. Gee* (M.D. La. No. 15-565) (Medicaid) (case stayed pending outcome of Fifth Circuit rehearing *en banc* of *Planned Parenthood of Greater Texas v. Smith*)

Abortion reporting

- **Indiana-** *Planned Parenthood of Indiana & Kentucky. v. Commissioner, Indiana State Department of Health* (S.D. Ind. No. 18-1219)

Chemical abortions (RU-486)

- **Hawaii-** *Chelius v. Wright* (D. Haw. No. 17-493)
- **North Dakota-** *American Medical Association v. Stenehjem* (D.N.D. No. 19-125)

Conscience rights

- **California-** *California v. Azar & Little Sisters of the Poor* (N.D. Cal. No. 17-5783) (Affordable Care Act Contraception Mandate)
- **California-** *California v. Azar* (N.D. Cal. No. 19-2769) (lead case) (HHS Conscience Protection Rule) (rule put on hold until November 22, 2019; hearing October 10, 2019)
- **California-** *City & County of San Francisco v. Azar* (N.D. Cal. No. 19-2405) (consolidated with No. 19-2769) (HHS Conscience Protection Rule)
- **California-** *County of Santa Clara v. U.S. Department of Health & Human Services* (N.D. Cal. No. 19-2916) (consolidated with No. 19-2769) (HHS Conscience Protection Rule)
- **California** – *Skyline Wesleyan Church v. California Dept. of Managed Care* (S.D. Cal. No. 16-00501) (California abortion insurance mandate)
- **New York-** *National Family Planning & Reproductive Health Association v. Azar* (S.D.N.Y. No. 19-5435) (consolidated with No. 19-4676) (HHS Conscience Protection Rule)
- **New York-** *New York v. U.S. Department of Health & Human Services* (S.D.N.Y. No. 19-4676) (lead case) (HHS Conscience Protection Rule) (rule put on hold until November 22, 2019)
- **New York-** *Planned Parenthood Federation of America v. Azar* (S.D.N.Y. No. 19-5433) (consolidated with No. 19-4676) (HHS Conscience Protection Rule)
- **North Dakota-** *Christian Employers Alliance v. Azar* (D.N.D. 16-309) (Affordable Care Act Contraception Mandate)
- **Washington-** *Cedar Park Assembly of God of Kirkland, Wash. v. Kreidler* (W.D. Wash. No. 19-518) (insurance coverage of abortion)

Free speech

- **California-** *Center for Medical Progress; David Daleiden v. Planned Parenthood Federation of America* (N.D. Cal. No. 16-236) (undercover videos)
- **Illinois-** *NIFLA v. Rauner* (N.D. Ill. No. 16-50310) (anti-pregnancy center law)

- **New Jersey-** *Turco v. City of Englewood, N.J.* (D.N.J. No. 15-3008) (buffer zone)

Informed consent

- **North Dakota-** *American Medical Association v. Stenehjem* (D.N.D. No. 19-125) (abortion pill reversal)
- **South Dakota-** *Planned Parenthood Minnesota, North Dakota, South Dakota v. Daugaard* (D.S.D. 11-4071)
- **Arizona?** (_____)

Omnibus challenge to abortion regulations

- **Arizona-** *Planned Parenthood Arizona v. Brnovich* (D. Az. No. 19-207)
- **Indiana-** **Whole Woman's Health Alliance v. Hill* (S.D. Ind. No. 18-1904)
- **Louisiana-** *June Medical Services v. Gee* (M.D. La. No. 16-444) (minibus challenging six 2016 laws)
- **Mississippi-** **Jackson Women's Health v. Currier* (S.D. Miss. No. 18-171)
- **Texas-** *Whole Women's Health Association v. Paxton* (W.D. Tex. No. 18-500)
- **Virginia-** *Falls Church Medical Center v. Oliver* (E.D. Va. No. 18-428)

Physician only laws

- **Idaho-** *Planned Parenthood of the Great Northwest & the Hawaiian Islands v. Wasden* (D. Idaho 18-555)

Prenatal non-discrimination

- **Kentucky-** **EMW Women's Surgical Center v. Beshear* (W.D. Ky. No. 19-178)

State Courts

Abortion clinic/provider regulations

- **Louisiana-** *June Medical Services v. Louisiana Department of Health* (19th J. Dist. Ct. No. 657201)

Abortion funding

- **Maine-** *Mabel Wadsworth Women's Health Center v. Hamilton* (Me. S. Ct. No. Cum-17-494) (MaineCare) (waiting for opinion from oral argument on May 15, 2018)
- **Pennsylvania-** *Allegheny Reproductive Health Center, et al. v. Pennsylvania Department of Human Services* (Penn. Commonwealth Ct. No. 26-MD-2019) (Medicaid)

Informed consent

- **Florida-** *Gainesville Woman Care v. Florida* (Fla. 2d. Cir. No. 2015-CA-001323) (reflection period)

IVF

- **Connecticut- *Bilbao v. Goodwin*** (Ct. S. Ct. No. 20078) (Decision: October 2019; Reversed Lower Court Decision; Ruled embryos are marital property and can be destroyed)