

**Reproductive Justice Syllabus**  
**Fall 2024**  
**Prof. Marcia Zug**

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**Office:** 232

**Office hours:** Monday 12:30-2 and Tuesday 1:30-3 or by appointment.

**Learning Objectives:**

This class will examine the legal regulation of sex and reproduction from the 19<sup>th</sup> century through the present. It will explore both specific regulations, as well as the policies behind these regulations. It will focus on who is subject to sexual and reproductive regulations and who is exempt. By exploring the history of reproductive regulation in America, this course seeks to better equip students to understand and analyze the scope, purpose and legality of the many new reproductive regulations that have been passed or proposed after the Supreme Court's decision in Dobbs.

**Course Materials:**

The majority of the readings for class will be from the Cases on Reproductive Rights and Justice Casebook, 2<sup>nd</sup> edition (Murray, Luker). Additional materials are available through the class Twen page under the "weblinks" tab, or through Westlaw.

**Assessments:**

Students will have two options for course assessments. Students may either write a traditional research paper of either 20 or 30 pages depending on the number of credit hours they have signed up for, or they may write three shorter 7-10 page legal analysis/ policy papers. The papers will count for 70% of the course grade. Class participation will count for 20% of the course grade. In class presentations will comprise 10% of the final course grade.

### **Paper Option A: Research paper**

You may write the paper on any topic related to the regulation of sex or reproduction in America. Paper topics must be approved in advance. The paper must be footnoted and include more than 15 sources for a 20-page paper or more than 20 sources for a 30-page paper. Sources include, cases, statutes, law review articles, news and magazine articles, research studies etc.

#### **Due Dates:**

- Topics submitted (Sept 25<sup>th</sup>)
- 7-10 page Draft (Oct 23th)
- Final Paper (Nov 20nd)

### **Paper Option B: Legislation/Policy Papers:**

**Paper one** will focus on a law regulating reproduction that has been enacted or proposed since the *Dobbs* decision (preferably one enacted in the past year). In this paper students will be expected to explain the law, how it was enacted, why it was enacted, the social, and economic implications, the potential legality of the law, any ancillary legal questions raised by the legislation, and who will be most impacted. (Note such legislation can be laws that restrict access to abortions and related care or laws passed to protect abortion and related issues)

**Paper two** will describe a legal challenge to one of the newly enacted post-Dobbs laws. This paper can be written as a case note if the case has already been decided or you can discuss the challenge using the briefs that have been filed. In the paper, explain the legal challenge, the court's decision or likely decision, whether you agree or disagree as a matter of legal interpretation, whether the case is likely to be appealed, and what the issues on appeal will be.

**Paper three** is a policy paper. Using what you have learned from the course, discuss the purpose behind one/a group of post-Dobbs reproductive regulations. Explain how the current fights over these regulations fit into the history of reproductive regulation and how the current regulations differ from previous reproductive regulations and restrictions. The paper

should cover some of the following: where you see reproductive regulation headed in the future, what challenges it will face, how these challenges might fare, the pros and cons of reproductive regulation, the types of regulations you would like to see enacted or not, and why and the public reaction to such regulations.

**Legislation Paper Dates:**

Paper 1: Oct 9

Paper 2: Oct 30

Paper 3: Nov 20

**Paper Topic examples:**

Legalization of over-the-counter birth control/ restrictions on contraceptives (IUDS/Pill).

Increased medical privacy or decreased medical decision-making power.

Restrictions on providing abortion information.

Using the mail to send abortion medication.

Restrictions on travel to procure abortions.

Intersection of reproductive rights and transgender rights

Emergency medical treatment

IVF and Surrogacy

**Presentations:**

In the second half of the semester, I would like to begin the class period with 1-3 ten minute presentations in which students will have the opportunity to share their work with their classmates. Presentations will not receive a letter grade only participation credit.

## Course Readings

### **Class 1: Regulating Sex**

Casebook (CB):

- Maynard v. Hill (13-16)
- Skinner v. Oklahoma (16-20)

- US v. Bitty (43-47)
- Lovsi v. Slayton (47-53)
- Doe v. Jindal (86-91)
- King v. Smith (91-97)

Skim :

- Turner v Safely (21-24)
- Loving v. Virginia (65-69)
- Lawrence v. Texas (69-80) (think about how the relationship changes from forbidden to permissible),

Articles:

- <https://newrepublic.com/article/148493/forgotten-war-women>
- <https://www.thetimes.co.uk/article/ukraine-soldiers-castrated-russia-war-0hflzhzlv>

**Class 2: Contraception**

Casebook:

- Notes: (572-775)
- One Package (580-87)
- Griswold v. CT (593-602)
- Dias v. Archdioceses (546-552)
- Smith v. Ricci (552-555 )

Skim:

- Eisenstadt v. Baird (602-04)

Article:

- Where do Reproductive Age women want to get Contraception, <https://www.liebertpub.com/doi/10.1089/jwh.2022.0406>

**Class 3: Contraceptives cont./ rt to conceive.**

Casebook:

- Sojourner A v. NJ (321-329)
- Tummino v. Hamburg (635-644)
- Burwell v. Hobby Lobby (654-688)
- North Coast Women's Care v. San Diego (486-494)

#### Articles:

- Understanding Contraceptive Failures:  
<https://www.tandfonline.com/doi/full/10.1080/23293691.2022.2090304>
- Domestic Abusers are Using Abortion bans to control their victims:  
<https://www.vice.com/en/article/dy3yny/abortion-bans-domestic-abusers>
- Britney Spears Demands End to Abusive Conservatorship:  
<https://variety.com/2021/music/news/britney-spears-conservatorship-abuse-1235003833/>
- Reproductive justice/environmental justice: <https://perma.cc/GGT5-K37W>
- Man Convicted of Removing Condom During Sex:  
<https://www.usatoday.com/story/news/world/2023/03/15/what-is-stealthing-man-convicted/11476683002/>

#### Statute:

- Cal. Fam. Code § 6320 (West)

#### **Class 4: ART and other issues surrounding conception.**

(will complete an in class drafting exercise)

#### Casebook:

- Baby M (398-414)
- In re Marriage of Rooks (435-441)
- Raymond T v. Samantha G(481-486)
- Arkansas Dept Human Services v. Cole (384-392)

#### Twen:

- LePage v. Center for repro. Med. (2024) (additional materials folder)

#### Articles:

- The Rise of Fertility Tourism:<https://www.forbes.com/sites/annahaines/2023/02/16/the-rise-of-fertility-tourism/?sh=2507f10647ef>
- Egg Freezing isn't the feminist issue you think it is: <https://psmag.com/social-justice/egg-freezing-isnt-feminist-issue-think-94657>

#### Podcast:

- The Retrievals: <https://www.thisamericanlife.org/804/the-retrievals>

#### **Class 5: Sterilization**

#### Casebook:

- Buck v. Bell (1058-1063)
- Relf v. Weinberger (1064-1072)

Westlaw:

- Wisconsin v. Oakley , 245 Wis. 2d 447 (2001)
- Fen Di Chen v. Holder, 399 F. App'x 609 (2d Cir. 2010)

Articles:

- Why isn't it easier to get your tubes tied? <https://www.everydayhealth.com/sexual-health/why-isnt-it-easier-to-get-your-tubes-tied/>
- Hamptons Bachelors Getting Vasectomies so Golddiggers Can't Trap Them: <https://nypost.com/2017/05/27/hamptons-bachelors-are-getting-vasectomies-so-golddiggers-cant-trap-them/>
- <https://daily.jstor.org/the-little-known-history-of-the-forced-sterilization-of-native-american-women/>

**Class 6: Pregnancy** (paper presentations begin)

Casebook

- Muller v Oregon (117-125)
- Cleveland Bd of Ed v. LaFluer (140-145)
- UAW v. Johnson Controls (145-154)
- University Health Services v. Piazzi (155-159)

**Class 7: Pregnancy cont.**

Casebook:

- Andrews v. Drew Municipal School (537-41)
- Ordway v. Hargarves (541-546)
- NJ v. Ikerd (170-174)
- Witner v. State (174-184)
- NJ v. LV & CM (200-204)

Skim:

- State v. McKnight (184-200)

Article

- These states are using fetal personhood to put women behind bars:  
<https://www.themarshallproject.org/2023/07/25/pregnant-women-prosecutions-alabama-oklahoma>

## **Class 8: Childbirth**

### Casebook:

- Madyun (211-15)
- In re AC (215-223)
- Pemburton (223-228)
- Doe v. Gustavas (246-251)
- Villegas (252-265)

### Articles

- Pregnant and Shackled <https://www.theguardian.com/us-news/2020/jan/24/shackled-pregnant-women-prisoners-birth>
- SC Bans Shackling of Pregnant Inmates:  
<https://apnews.com/article/a27f46fd1f2c1422a177887466e07b93>

## **Class 9: Post-partem**

### Casebook:

- Knussman 509-518
- Falk v. City of Glendale (528-33)
- EEOC v. Houston (533-537)

### Articles:

- A Year of Breastfeeding Costs As Much as \$11,000: <https://medicine.yale.edu/news-article/a-year-of-breastfeeding-costs-families-as-much-as-dollar11000-study-finds/>
- Breastfeeding Associated with Lower Infant Mortality:  
<https://www.sciencedaily.com/releases/2023/07/230724122640.htm>
- A new breast pump law has gone into effect:  
<https://www.nytimes.com/2023/05/03/well/family/pump-act-breastfeeding.html>

## **Class 10: Regulating Parents**

### Casebook:

- Meyer (277-280)
- Prince (283-288)
- Quilloin (292-304)
- In re RIS (354-358)

## Articles

- Florida School District Removes Five Books After Parents Object:  
<https://nypost.com/2023/07/12/moms-for-liberty-gets-5-inappropriate-books-removed-from-florida-schools/>
- Orange Unified May Mandate Telling Parents Their Child is Transgender:  
<https://www.latimes.com/california/story/2023-08-16/orange-unified-may-mandate-telling-parents-if-child-is-transgender-as-policy-spreads>

## **Class 11:** Abortion

### Casebook:

- Dobbs v. Jackson Women’s Health (976-1030 -- skim majority)
- Commonwealth Bangs (690-691)
- People v. Belous, (698- 709)
- Roe v. Wade (709-724)
- Harris v. McRae (740-754)

### Articles:

- Characteristics of people obtaining Medication Abortion vs. Procedural,  
<https://www.sciencedirect.com/science/article/pii/S0010782423002317?via%3Dihub>
- Adoption is just not for me: <https://www.liebertpub.com/doi/10.1089/jwh.2022.0406>
- I was Raped by my Father. An Abortion Saved My life:  
<https://www.nytimes.com/2021/11/30/opinion/abortion-texas-mississippi-rape.html?auth=login-google1tap&login=google1tap>

## **Class 12:** Abortion cont.

### Casebook:

- Webster v. Reproductive Health Services (772-787)
- Planned Parenthood v Casey (797-823)
- McCormak v. Heideman(862-876)

### Article:

- Fifth Amendment Rights as Abortion Rights:  
<https://harvardlawreview.org/blog/2023/04/fifth-amendment-rights-as-abortion-rights/>

## **Class 13:** Abortion cont.



Casebook:

- McCullen v. Coakley (915-933)
- Whole Women's Health v. Hellerstadt (949- 976)
- Dobbs (976-1030)
- Jackson (1048-1054)
- EMTALA Case (US v. Idaho) (on Twen)

Article:

Texas Women Denied Abortion for Ectopic Pregnancies (Twen weblinks)