

From the UMHS ObGyn Program in Sexual Rights and Reproductive Justice



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FEDERAL COURT NEWS

SUPREME COURT UPHOLDS HEALTH CARE REFORM LAW

The United States Supreme Court has voted to uphold the Patient Protection and Affordable Care Act. The decision allows important pieces of the health care reform legislation to go forward in 2014, such as incorporation of the health insurance mandate and expansion of Medicaid coverage. The mandate requires people who exceed a certain annual income level to purchase health insurance coverage or pay a penalty to the federal government. The Medicaid expansion will increase coverage of some people, previously not eligible for Medicaid, based on their income-level.

The Court determined that the mandate did not violate the U.S. Constitution because, despite the nomenclature used in the legislation, the mandate was a tax and not a penalty. Congress may impose taxes as part of its constitutional authority to tax and spend. Similarly, the Court allowed for the expansion of Medicaid, but with a caveat. While Congress can increase the breadth of Medicaid, it cannot strip states of all federal Medicaid funding if the states do not decide to expand the program as mandated in the law. The Court stated such an action would improperly coerce the states to implement federal policy because federal Medicaid funding constitutes a large chunk of state budgets.

For more information on the Supreme Court's decision, go to: <http://www.scotusblog.com/>.

For commentary on the decision from constitutional law professors at the University of Michigan Law School, go to:
https://www.law.umich.edu/newsandinfo/features/Pages/SCOTUS_ACA.aspx.

COURT HOLDS THE DEFENSE AGAINST MARRIAGE ACT UNCONSTITUTIONAL

This June the 1st Circuit United States Court of Appeals invalidated the Defense of Marriage Act (DOMA). This decision will likely lead the U.S. Supreme Court to review the 16-year-old law.

DOMA is a federal law that defines "marriage" as exclusively between a man and woman and, as a result, prohibits the federal government from recognizing marriage between two people of the same sex. The Act also stipulates that no state need legally recognize a same-sex marriage performed and legally sanctioned in another state. Currently, states recognize heterosexual marriages occurring in one state as valid in all other states.

The court ruled DOMA violates the 14th Amendment of the U.S. Constitution because it denies citizens equal protection under the law. DOMA requires couples in a state-approved same-sex marriage to file separate tax returns and denies the surviving spouse Social Security Benefits. This was deemed inequitable because people in heterosexual marriages can recover Social Security benefits when their spouse dies and can file joint tax returns.

In its decision, the 1st Circuit did not address whether states have to recognize same-sex marriages that are legal in other states and whether same-sex couples have a constitutional right to marry.

Previously, the Justice Department defended DOMA as constitutional, but reversed this policy in 2011. Republicans in Congress are now defending the law.

PROPOSED AND ENACTED MICHIGAN STATE LAW

MICHIGAN LEGISLATURE CONSIDERS 31 BILLS CONTAINING THE WORD "FETUS" IN ITS 2011-12 SESSION

During the 2011-12 legislative session the Michigan Legislature has considered 31 bills that contain the word "fetus." Here are some examples and where they stand:

1. SB 13

"Fetus" shall be included in the legislative definition of the word "individual."

Status: referred to Committee on January 19, 2011

2. SB 51

Live embryos, fetuses, or neonates cannot be used for nontherapeutic research if the research risks the life or health of the embryo, fetus, or neonate. If the embryo or fetus was the subject of a planned abortion, it shall not be used for nontherapeutic research.

Nontherapeutic research shall not be performed on an embryo or fetus, which was known to be the subject of a planned abortion that was done for any other reason than to protect the life of the mother.

Unless the consent of the mother is given, a health professional or other person cannot use the organ, tissues or cells of an embryo, fetus, or neonate if the embryo, fetus, or neonate was the result of a non-elective or spontaneous abortion. A written statement, signed by the mother, is sufficient to give consent.

Status: referred to Committee on January 20, 2011

3. SB 160

Except to save the life of the mother, the performance of a "partial-birth" abortion is a felony and punishable by a maximum 2-year imprisonment or fine of \$50,000, or both.

According to the law, a "partial-birth" abortion means the intentional vaginal delivery of a "living fetus until the entire fetal head" or "any part of the fetal trunk past the naval is outside the body of the mother" for the "purpose of performing an overt act that the person knows will kill the partially delivered living fetus."

Status: enacted and made effective on January 1, 2012

4. SB 523

If a doctor determines that a woman is carrying a fetus whose gestational age is 19 weeks or more, the doctor can only perform an abortion on the woman in a hospital that has a neonatal intensive care unit or some other unit that specializes in the care of ill or premature newborns.

Status: referred to the Health Policy Committee on June 23, 2011

5. SB 612

No qualified health insurance plan, which is offered through a state exchange created as part of the Patient Protection and Affordable Care Act (the federal health care reform law), can provide coverage for a non-medically necessary abortion.

Status: referred to the Committee of the Whole on December 8, 2011 after Health Policy Committee recommended it be given immediate effect.

6. SB 894

By July 1, 2012 the state shall compile a list of chemicals that are carcinogens, reproductive or developmental toxicants, endocrine or hormone disruptors, and persistent, bio-accumulative and toxic.

By July 1, 2012 the state shall compile a list of chemicals that 1) have been found to be present in human blood, which includes umbilical cord blood, breast milk, and urine; 2) have been found to be present in consumer products or in the home environment, such as in household dust; 3) have been found in fish, wildlife, or the natural environment; 4) is included in the EPA's sponsored or unsponsored chemicals list; and/or 5) is determined to be relevant to the health of children in Michigan.

The state must publicly post the lists.

Status: referred to the Committee on Government Operations on January 17, 2012

7. HB 5684 ([See separate summary on proposed law on Page 3](#))

A dependent, for the purposes of claiming a dependency exemption on the taxpayer's federal income tax return, includes a fetus that has attained at least 12 weeks of gestation and has been under the care and observation of a physician since at least 12 weeks of gestation.

Status: referred to the Tax Policy Committee on May 29, 2012 and filed on May 30, 2012

8. HB 5731 ([See separate summary on similar federal legislation on Page 4](#))

A physician cannot intentionally perform an abortion she knows is motivated by the sex of the fetus or coercion.

Status: referred to the Health Policy Committee on June 12, 2012 and filed on June 13, 2012

PROPOSED STATE LAW WOULD COUNT FETUSES AS DEPENDENTS

Michigan may soon grant a \$3,700 tax deduction to expectant parents if the state legislature enacts new legislation. The legislation, House Bill 5684, allows for residents to claim fetuses, who have passed 12 weeks in gestation, as dependents.

Supporters of the legislation claim that the bill aligns with their belief that a fetus is a child. They also say it encourages mothers to get prenatal care because in order to take advantage of the tax deduction the mother must prove she has received medical treatment and monitoring of her pregnancy since at least the 12th week of gestation.

The governor's office has not indicated whether it will support or oppose the legislation, but last year the governor's tax reform measure did away with a \$600 per-child tax credit. The new legislation only applies to fetuses and does not re-extend tax deductions for children who have been born.

The bill is currently before the state house's Tax Policy Committee.

PROPOSED FEDERAL LEGISLATION

CONGRESS VOTING ON FEDERAL LAW TO BAN SEX-MOTIVATED ABORTIONS

The U.S. Senate is now considering the "Prenatal Nondiscrimination Act." The legislation, proposed by Senator David Vitter of Louisiana, outlaws:

- The performance of an abortion when the medical provider knows the abortion is sought because of the sex of the fetus. However, the medical provider does not need to inquire into the motivations of women seeking an abortion.
- The use of threats or intimidation to coerce a sex-motivated abortion.
- The solicitation or acceptance of payment for the performance of a sex-motivated abortion.
- The transportation of a woman across state lines or U.S. borders to facilitate the attainment of a sex motivated-abortion.

Engaging in any of the above will expose the violator to five years in prison or a fine. The bill allows both the mother and the father of the fetus to raise a civil claim if the fetus was aborted as a result of its sex, assuming that the claimant did not seek the abortion.

Some advocates for abortion rights, such as the National Women's Law Center, oppose the bill because they believe it will lead to racial profiling of women getting abortions. The legislation includes "findings" that claim sex-motivated abortions occur in the United States, particularly among unnamed ethnic communities that originate from cultures where sex-motivated abortions are common, and tourists from other countries in which sex-motivated abortions are already legally proscribed.

The National Women's Law Center opposed the House version of the bill when it came up for a vote in late May. The legislation did not pass the House. The Senate version is now pending in the Committee on the Judiciary.

Among the legislation's other "findings" is a claim that abortions, in general, negatively affect the health and welfare of women who receive abortions. The alleged health effects are increased risk of suicide, depression, and breast cancer. No scientifically valid studies are provided to support these "findings" and the currently available studies do not show any increased risk of suicide, depression, or breast cancer.

At present, three states - Arizona, Pennsylvania, and Oklahoma - already ban sex-motivated abortions. There are no known cases or fines for violation of these state laws.

VIOLENCE AGAINST WOMEN ACT UP FOR REAUTHORIZATION

The U.S. House of Representatives has voted to reauthorize the Violence Against Women Act (VAWA) for five more years. The vote met with extensive opposition from Democrats and some Republicans who believe it fails to provide important protections to members of the LGBT community, Native Americans, and undocumented illegal immigrants.

Enacted in 1994, the VAWA created harsher penalties for repeat sex offenders and a federal rape shield law to protect victim's from having their past sexual histories brought up in court, prohibited victims from being charged for the expense of their own rape exam, and provided funding for the training of law enforcement officials to better respond to incidences of sexual and domestic violence, among other things. It has been re-authorized in 2000 and 2005 and is now going through the re-authorization process once again.

The controversy centers on what version of the VAWA to pass. The Senate is debating a separate version of the bill, which House Democrats and the White House support. Here are some differences:

- The Senate bill specifically provides VAWA protection to gay and transgendered Americans, while the House bill contains language that is gender-neutral.
- The Senate bill allows Native Americans to pursue domestic and sexual violence charges against U.S. citizens in the tribal legal system. The House version does not make this allowance.
- The Senate bill grants more temporary visas to women who are assisting in investigations of domestic and sexual violence charges than the House bill permits (15,000 as opposed to 10,000 visas).

The next step in the reauthorization of VAWA is expected to be an attempt to rectify the differences in the two pieces of legislation and come up with a common bill that can pass in the House and the Senate.

SENATE REJECTS THE PAYCHECK FAIRNESS ACT

A bill to provide greater protection against sex discrimination in the workplace failed to pass the Senate last June. The Paycheck Fairness Act mandates that employers show that any pay difference between male and female employees in the same position is not based on the sex of the worker. A recent U.S. Census report showed that women earned 77 cents for every dollar men earned in the same position.

The vote was 52-47, with no Republicans supporting the legislation. Republican senators said they opposed the legislation because they believed it would put a financial strain on small businesses and threaten the economy.

The bill was previously put forward in 2010. It is expected to be raised in the future, but unlikely to come up again in this legislative session.