

2016 Lavender Law Conference and Career Fair Proposal

Workshop Title

“When Equality Principles Intersect: The Convergence of LGBT Rights and Reproductive Rights at the Supreme Court”

Workshop Description

This panel will discuss recent major cases—such as *Obergefell*, *Whole Woman's Health*, and *Zubik*—and how advocates from the LGBT and reproductive rights movements have participated in them. We will examine emerging issues in which these interests converge, such as the provision of health care for LGBT persons in reproductive clinics. We will see how an intersectional approach that literally brings our two movements together in the same clinical spaces can strengthen both communities.

Workshop Full Proposal

The movements for LGBT equality and reproductive freedom share profoundly similar goals—to protect the fundamental right to bodily autonomy, challenge traditional gender norms, and secure the freedom of individuals to form families on their own terms. They also share an entrenched and largely overlapping opposition from groups rooted in conservative religious beliefs and opposed to both reproductive autonomy and equality for LGBT people. In 2015 and 2016 we have seen several critical cases come before the U.S. Supreme Court on both LGBT rights and reproductive rights. In *Obergefell v. Hodges* the Court affirmed the right of same-sex couples to marry, using an equal dignity and individual autonomy frame that invoked key precedents from reproductive rights jurisprudence. By the time of this panel we will have decisions from the current term in *Whole Woman's Health v. Hellerstedt*, a case that will significantly affect how severely states may restrict abortion access, and *Zubik v. Burwell*, which will further define the reach of the federal Religious Freedom Restoration Act in proscribing the rights of third parties.

The close intersection between the LGBT and reproductive health, rights and justice movements is clear. And yet the movements do not always work hand in hand. Recently, tensions have surfaced between the two movements as a result of some within the reproductive justice movement seeking to promote greater inclusion of the needs of the transgender community. While neither denying those needs nor disagreeing with the ideal of inclusion, others in that movement have voiced concerns over a perceived silencing of the needs of cisgender women.

While the surfacing of this issue has created some conflict and the danger of a greater distancing between the two movements, the conversations that have ensued also present a powerful opportunity. The U.S. Supreme Court's recent affirmation of marriage equality, the surge in visibility and awareness of transgender people, and the return of abortion to the Court represent a confluence of events that can reaffirm the core principles that the two movements share and, potentially, harness the momentum within the LGBT movement to further access to abortion and other reproductive health care.

As debates rage over language and law, those serving our communities on the ground have moved ahead with meeting the health care needs of women and LGBT people. While having to fight an endless stream of legislative and regulatory attacks, abortion clinics have persevered and struggled to keep their doors open to provide a service that others will not. While doing so, many have also moved to meet the unmet needs of another segment of their communities—those who identify as lesbian, gay, bisexual and transgender. A number of independent abortion clinics and Planned Parenthood health centers now advertise and offer LGBT health care services, including hormone therapy for transgender patients. As experts in providing stigmatized health care services, these reproductive health care providers are providing safe and welcoming spaces for LGBT people to receive essential health care, at times functioning as de facto primary health care providers.

With the promulgation of comprehensive federal regulations implementing the nondiscrimination provision (Section 1557) in the Affordable Care Act, these LGBT health care services will receive fuller insurance coverage, making them more accessible to individuals and more financially viable for clinics to provide.

This panel will explore how the promulgation and subsequent enforcement of Section 1557 can not only expand access to care for LGBT persons, but also improve the viability of reproductive health clinics that are struggling to survive nonstop legislative assaults. We will see how an intersectional approach that literally brings our two movements together in the same clinical spaces can strengthen both communities.

Primary Presenter

Caroline Sacerdote, *Ford Foundation Fellow, Lambda Legal*

Co-Presenters

Julianna Gonen, *Federal Policy Director, National Center for Lesbian Rights*

Ma'ayan Anafi, *Policy Counsel, National Center for Transgender Equality*

Nikole Gettings, *Director of Clinical Services, Choices: Memphis Center for Reproductive Health*

Omar Gonzalez-Pagan, *Staff Attorney, Lambda Legal*

CLE Materials (Submitted as One Merged PDF through Event Portal)

Brief for Lambda Legal as Amicus Curiae in Support of Petitioners and Supporting Reversal, *Whole Woman's Health, et al. v. Hellerstedt, et al.*, No. 15-274 (U.S. argued Mar. 2, 2016), available at http://www.lambdalegal.org/in-court/legal-docs/wwh_tx_20160104_amicus.

Brief for National Center for Lesbian Rights et al. as Amici Curiae in Support of Petitioners, Urging Reversal, *Whole Woman's Health*, No. 15-274, available at <http://www.nclrights.org/wp-content/uploads/2016/01/Amicus-WWH-v-Cole.pdf>.

Priscilla J. Smith, *Give Justice Ginsburg What She Wants: Using Sex Equality Arguments to Demand Examination of the Legitimacy of State Interests in Abortion Regulation*, 34 Harv. J. L. & Gender 377, 382 (2011), available at <http://www.law.harvard.edu/students/orgs/jlg/vol342/377-412.pdf>.

Laurence H. Tribe, *Equal Dignity: Speaking Its Name*, 129 Harv. L. Rev. F. 16 (2015), available at http://cdn.harvardlawreview.org/wp-content/uploads/2015/11/vol129_Tribe.pdf.

Kenji Yoshino, *The Supreme Court 2014 Term—Comment: A New Birth of Freedom?: Obergefell v. Hodges*, 129 Harv. L. Rev. 147 (2015), available at <http://cdn.harvardlawreview.org/wp-content/uploads/2015/11/147-179-Yoshino-Online.pdf>.