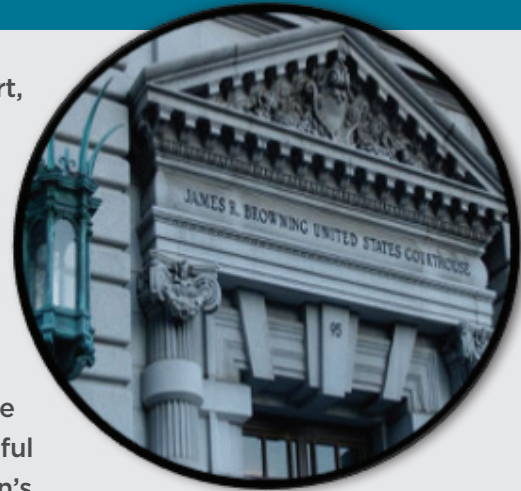


Reshaping of the lower federal courts: What is at stake for reproductive health and rights?

A great deal of attention is paid to possible openings on the Supreme Court, especially now with the vacant seat opening since the recent death of beloved Justice Ruth Bader Ginsberg. However, only a small fraction of legal cases ever makes their way to the highest court in the land. Much of what is decided by the federal courts that effects our day-to-day life is decided by judges at the Appellate Court or District Court levels. Therefore, consideration must be given to the importance that the lower federal courts have on our sexual and reproductive rights. The Trump administration has done just that, quietly appointing over 200 judges to the lower federal courts in under four years. President Trump has been successful in effectively stacking the lower federal courts in favor of the administration's anti-choice agenda.



The Federal Courts

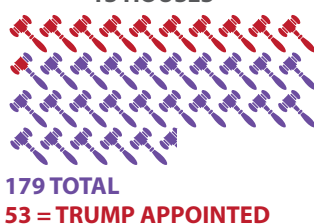
The appointments of Justices Neil Gorsuch and Brett Kavanaugh to the U.S. Supreme Court have increased the chances that the Court will limit, or quite possibly overturn, *Roe v. Wade*, the 1973 landmark case in which the Supreme Court decided pregnant people have the liberty to choose to have an abortion. Supporters of sexual and reproductive health rights are acutely aware of just how dangerous these Trump-appointed justices are when it comes to the integrity of our constitutional right to abortion. So, if Justices Gorsuch and Kavanaugh have been detrimental to our right to sexual and reproductive health, adding another Trump-appointee to the Court could be catastrophic.

But it's not just on the Supreme Court that worries reproductive health advocates; since taking office, President Trump has appointed 218 judges to the federal courts. This lasting judicial legacy of reshaping the lower federal court system is not slowing down, either. At the time of this publication, there are currently no vacancies available for the Court of Appeals as President Trump has successfully filled 53 judgeships during his time as President. There are 56 vacancies available for the District Courts, and President Trump has successfully appointed 161 judges to these Courts. With the help of Senate Majority Leader, Mitch McConnell, President Trump promises to successfully fill the remaining vacancies in the coming months.

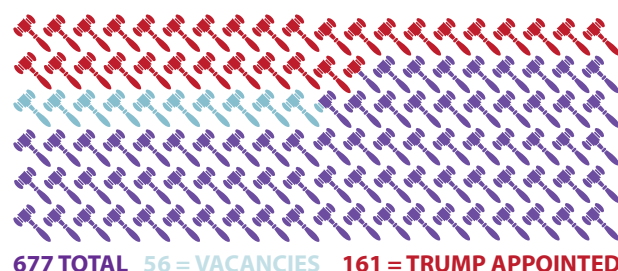
SUPREME COURT



U.S. COURT OF APPEALS: 13 HOUSES



U.S. DISTRICT COURTS: 94 COURTS



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June Medical Services v. Russo

Targeted restrictions on abortion providers (or more commonly referred to as TRAP laws) are laws that impose medically unnecessary requirements upon abortion providers and health centers. At issue in the case of *June Medical Services v. Russo* was the legality of a Louisiana TRAP law that required doctors who perform abortions to have admitting privileges at a nearby hospital. This TRAP law was familiar to the Supreme Court because in 2016, the Court struck down a Texas law — that was nearly identical to the Louisiana law — in the case of *Whole Woman's Health v. Hellerstedt*. The Court found the Texas law to impose an undue burden on those seeking abortions. However, *Whole Woman's Health* decision was made in 2016. With a newly reformed Court in 2020 and two Trump-appointed Justices so brazenly anti-choice, reproductive health and rights supporters didn't feel they could depend on the Court to uphold the precedent established in 2016. Though the Court did find the Louisiana law to be unconstitutional, Chief Justice John Roberts, who cast the deciding vote, made it clear that while the Court was bound to their prior decision, other TRAP laws might be held constitutional.

U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA



January 2016

The Court overturned District Court's decision and upheld the Louisiana TRAP Law.

5TH CIRCUIT COURT OF APPEALS



September 2018

The Court blocked the law from going into effect in light of *Whole Woman's Health*.

SUPREME COURT



June 2020

Reversed: In 5 – 4 decision, the Louisiana Act 620 was deemed unconstitutional, reversing the Fifth Circuit's decision.

The Lower Federal Courts

Over 75 percent of Trump's judicial appointees to the lower courts are young, white males who could very likely remain on the bench for 30 or more years as these are lifetime appointments. In fact, of Trump's confirmed appeals court judges, none are Black individuals and only one is Hispanic. Many of these judges were pushed through their confirmations not based on merit, but because of their prior support for anti-abortion laws. Today, with almost one in three federal appeals court judges and with one in four district court judges appointed by Trump, the federal court system is increasingly hostile to reproductive health and rights.

The Appellate Courts



30%

TRUMP-APPOINTED JUDGES



85% WHITE



79% MALE

The District Courts



26%

TRUMP-APPOINTED JUDGES



89% WHITE



76% MALE



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What is at stake?

The reshaping of the federal courts threatens abortion rights, but the judicial appointments made by President Trump to the Appellate and District Courts could have an even broader impact on sexual and reproductive health and rights. In the years ahead, the federal courts could also be hearing cases involving a wide range of reproductive rights issues, in addition to cases related to abortion rights. These other issues could include access to contraception, religious refusal, and LGBTQ+ rights, among others. Decisions from the lower federal courts could affect the interpretation of several federal laws and impact the operations of numerous state and federal programs.

Title X and the Courts

The Title X Family Planning Program provides federal grants for comprehensive and confidential family planning and preventative services, including a broad range of contraceptive counseling. In previous years, Title X-supported clinics delivered family planning services to 4 million low-income individuals annually. However, the Trump administration's new rule, a controversial regulation often referred to as the Domestic Gag Rule, is rolling back the progress made by the program over the decades. It directs federal money away from reproductive health-focused providers, like Planned Parenthood, to make way for ideologically motivated organizations, pushing an unscientific and ineffective "abstinence-only-before-marriage" agenda.

9TH CIRCUIT COURT OF APPEALS



29 TOTAL JUDGES

10 = TRUMP APPOINTED JUDGES

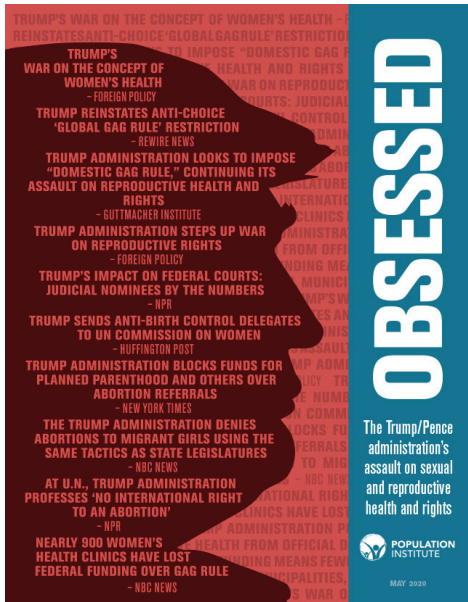
Several states and reproductive health advocates fought the dismantling of the Title X program in the federal courts. In July 2019, 20 states and DC, as well as Planned Parenthood and other Title X grantees, asked the 9th Circuit Court of Appeals to impose an emergency stay on the new regulations. The 9th Circuit has traditionally been a more progressive court, but with ten Trump-appointed judges on its bench, that appears to be changing. By a 7-4 vote, the 9th Circuit last year denied the stay, allowing the new rule to remain in effect until the Court had an opportunity to rule on the merits. In February of this year,

in a 7-4 decision, the 9th Circuit voted, on the merits, to uphold the Trump administration's Title X gag rule. This decision by the courts has forced several reproductive health providers to refuse federal funds rather than accept the prohibitive conditions imposed by the Trump administration.

This adverse decision by the 9th Circuit is a direct result of the success Trump has had at stacking the lower federal courts with anti-reproductive rights judges. Disturbingly, we can expect to see more instances like this in the coming years, even after Trump leaves office.



Obsessed



Over the past almost four years, the assaults on sexual and reproductive rights have intensified dramatically. Reproductive rights activists fear, and rightly so, that the appointments of Neil Gorsuch and Brett Kavanaugh, and quite possibly a third Trump-appointed judge, to the U.S. Supreme Court and the stacking of the lower federal courts with more than 200 Trump appointees will result in the erosion of abortion rights which could lead to the overturning of *Roe v. Wade*. Furthermore, it could lead to an attack on a broader range of reproductive health services and programs, as is evident with the Title X program.

None of this is inevitable. The battle over sexual and reproductive health and rights is far from over, but effective advocacy begins with informed advocates. In that spirit, the Population Institute encourages advocates of reproductive rights to read “Obsessed: The Trump/Pence administration’s assault on sexual and reproductive health and rights” and, above all else, stay actively engaged.



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