



REPRODUCTIVE HEALTH AND EQUITY Fact Sheet


Four Federal Reproductive Health Care Cases You Should Care About

Introduction

As the country, and the world, wait to see how the Supreme Court decides the case of [Alliance for Hippocratic Medicine v. FDA seeking to prevent the distribution of abortion medication](#), there are four important reproductive health care cases working their way through the federal court system that may also affect a large number of individuals, especially adolescents and people who have low incomes. These four cases involve Title X, the federal program that awards money to deliver equitable, affordable, client-centered, and high-quality family planning and preventive health services to [grantees](#) in all fifty states, Washington DC, American Samoa, the Federated States of Micronesia, Guam, the Northern Mariana Islands, Palau, Puerto Rico and the U.S. Virgin Islands. These grantees work, often through subrecipients, to fund service sites that provide family planning care, including testing and treatment of sexually transmitted infections, and “[related preventive health services that are considered beneficial to reproductive health](#)” including certain cancer screenings and vaccination against human papillomavirus (HPV). Title X funds services for [almost three million people](#) every year, and almost a third of those individuals are [uninsured](#). More than half of all people served by Title X are [under the age of 30](#), and 84% have family incomes [below 250% of the federal poverty level](#). Title X is an important safety net program across the country; it funds family planning and preventive services for millions of people every year, most of whom have low incomes and are of reproductive age. Although Title X has been law for 54 years, courts have played and continue to play a role in construing the permissible use of Title X funds, with these four pending cases as examples.

Deanda v. Becerra

In August 2020, Alexander Deanda, a Texas resident, filed suit against the Department of Health and Human Services (HHS) and its then Secretary, Alex Azar, about his minor children’s access to contraception under Title X. The Title X enabling statute requires family participation “[to the extent practical](#)”. The Title X regulation at issue in this matter reads, “[\[t\]o the extent practical, Title X projects shall encourage family participation. However, Title X projects may not require consent of parents or guardians for the provision of services to minors, nor can any Title X project staff notify a](#)



[parent or guardian before or after a minor has requested and/or received Title X family planning services.](#)” In his [complaint](#) against HHS and Secretary Azar, Mr. Deanda asserted that he objected to his minor children receiving services and medications without his consent. He claims that the regulation violates his constitutional right to parent free of unreasonable government interference and that the regulation violates a [Texas law](#) that gives parents the power to decide their children’s medical care. Mr. Deanda [requested](#) that the United States District Court for the Northern District of Texas find that the Title X program, as administered, is unconstitutional and that HHS should be enjoined from funding services for minors for which the grantee did not first receive parental consent.


On December 12, 2022, Judge Matthew Kacsmaryk found in Mr. Deanda’s favor, holding that the Title X regulation [“violates the constitutional rights of parents to direct the upbringing of their children.”](#) Judge Kacsmaryk further held that the Title X regulation violated the Texas law giving parents the right to consent to medical care for their children. Judge Kacsmaryk vacated the regulation. HHS and Secretary Becerra appealed.

On March 12, 2024, the Fifth Circuit issued its [decision](#) following HHS’ appeal. The Fifth Circuit issued a narrower decision than Judge Kacsmaryk, finding that Title X does not preempt the Texas parental consent law and not addressing the constitutional challenge. As a result, the Court did not strike the regulation completely, instead finding that grantees could abide by the Title X regulation and the Texas law. What began as an attempt to bring [a class action](#) lawsuit against HHS for violation of parents’ constitutional rights ended with a narrow judgment based on preemption and applicable only in Texas. However, the implications of this ruling for minors’ access to contraception cannot be understated. While the decision only applies to Texas law, it is possible that similar cases will be brought across the country when state parental consent laws are at play.

Perhaps most fascinating about this case is its misalignment with [Planned Parenthood v. Heckler](#), where the D.C. Circuit struck a regulation by the Reagan Administration seeking to require Title X providers receive parental consent before prescribing contraceptives. The Court held that the [“regulations are fundamentally inconsistent with Congress’ intent and purpose in enacting Title X.”](#) The Fifth Circuit distinguished the *Heckler* case by noting that case did not involve any preemption issues and continued on to quote Judge Bork’s partial dissent ten times in its *Deanda* decision. It is too early to know whether HHS will seek Supreme Court review of the decision but, for now, adolescents in Texas have even less access to reproductive health care than they did immediately after the *Dobbs* decision.

[Ohio v. Becerra](#)

In 2021, Ohio, Alabama, Arkansas, Florida, Kansas, Kentucky, Missouri, Nebraska, Oklahoma, South Carolina and West Virginia [filed suit](#) against HHS and Secretary Becerra, alleging that the administration’s 2021 Title X Final Rule is contrary to law. The [2021 rule](#) rescinded and replaced the 2019 rule. The 2019 rule, finalized under President Trump, required that Title X grantees have [clear financial and physical separation](#) from any abortion services provider and [eliminated the requirement that Title X service sites offer abortion counseling and referral](#). The 2019 rule went so far as to prohibit referrals to abortion as a method of family planning and, accordingly, was often referred to as a [“gag rule”](#). Following the rule’s promulgation [more than 1,000 service sites in 33 states withdrew from the program](#), decimating the service network.



Ohio and the other petitioner states sought a preliminary injunction preventing the 2021 rule from being implemented in the U.S. District Court for the Southern District of Ohio. The Court [denied the plaintiffs'](#) request for a preliminary injunction on December 29, 2021. Petitioner states appealed the ruling to the Sixth Circuit which [issued a decision](#) on November 23, 2023. The Sixth Circuit found that DHHS' requirement that Title X providers include abortion in options counseling was [not arbitrary and capricious and should not be enjoined](#). However, the Court did find that DHHS [did not act appropriately](#) in rescinding and replacing the physical separation requirement from the 2019 rule. The Court enjoined the rule only in Ohio, as that state alone had demonstrated (financial) [irreparable harm](#) from the rule change.

Practically speaking, it is difficult to determine the true effect of this decision on the Title X program. The Court upheld the referral requirement but found that requiring no physical separation between Title X providers and abortion service providers is insufficient. The Court did not replace the 2021 rule with the 2019 physical separation rule; it just found that the agency's action was unlawful. Further complicating the decision is the fact that it only applies in Ohio. As we enter a Presidential election year, it will be important to note which administration will control HHS going into 2025, and which rules will be promulgated and enforced.

Tennessee v. Becerra and Oklahoma v. Becerra

Both [Oklahoma](#) and [Tennessee](#) ban abortion with extremely limited exceptions. Both states' health departments were also grantees under the Title X program [into 2023](#), after their abortion bans were passed and implemented.

In [March 2023](#), HHS notified Tennessee that the state was acting in violation of Title X program rules by not requiring providers to refer pregnant individuals to abortion providers. Tennessee's Title X funding was [terminated](#). Tennessee appealed the decision within HHS. In [September 2023](#), Tennessee was informed that the Title X funding previously allocated to the state health department was reallocated to Planned Parenthood in Tennessee. (Note: The current Title X grantee for Tennessee is listed as [Converge, Inc.](#), a Mississippi-based nonprofit.). On October 24, 2023, Tennessee brought suit against Secretary Becerra and HHS seeking to "[set aside...the cancellation decision and \[seeking to\] restore Tennessee's rescinded Title X funding](#)". On March 11, 2024, Tennessee's motion for preliminary injunction was [denied](#); the Court [finding](#) that Tennessee had accepted the funds conditioned on the 2021 rule, and termination of the funding was appropriate based on Tennessee's failure to comply with the program's requirements. Tennessee appealed to the 6th Circuit on March 12, 2024.

In August 2022, Oklahoma "[sought to modify its Title X programmatic procedures to ensure compliance with Oklahoma abortion law](#)." This modification was denied by HHS in November of 2022 and six months later Oklahoma's Title X funding was [suspended](#). In September 2023, Oklahoma's Title X funds were [reallocated](#) to two non-profit community organizations. On January 26, 2024, Oklahoma brought suit against Secretary Becerra and HHS seeking to enjoin the agency's decision and also requesting a decision by April 1, 2024 in order for Oklahoma to plan for [HHS' disbursement of Title X funds for 2024](#). On March 26, 2024, Judge Heaton of the United States District Court for the Western District of Oklahoma [denied](#) Oklahoma's motion for preliminary injunction during oral argument on the matter. Oklahoma appealed to the 10th Circuit on April 1, 2024.



Looking Forward

These four cases represent the wide array of attacks on reproductive health care being fought in courtrooms across the country. Title X is often considered a small program (in dollars and clients served) but has an immense impact on the clients it serves who can receive low cost, or no cost, health care in their communities. The majority of clients served are young and have low incomes, making easy, affordable, access to reproductive health care even more important, especially in states where abortion is illegal. Title X is always a politically sensitive issue and moving into this election year, we should expect to see more focus on this program.

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