

JUDGES & COURTS

TRUMP'S TAKEOVER OF THE COURTS: WHAT'S AT STAKE FOR GENDER JUSTICE

In the last three years, President Trump and the Republican-controlled Senate have systematically stacked the federal courts with judges who are hostile to reproductive rights, LGBTQ rights, and other civil rights, effectively remaking the judiciary to support their discriminatory agenda. In just 36 months, the Senate has confirmed 187 federal district and appellate judges.¹ As of December 2019, President Trump has gotten 50 circuit court nominees confirmed, which is the fastest pace for confirming circuit level judges of the last six presidents.² While the Trump Administration and its allies launch unprecedented attacks on the rights of women and others who face discrimination, Trump is also nominating extreme judges with records hostile to these very rights. Trump's redrawing of the court system—from the district court level all the way to the Supreme Court—will shape the fight for gender justice for decades to come.

EQUAL OPPORTUNITIES IN SCHOOLS

Every student deserves equal opportunities to succeed in schools, and every student has the right to be free from discrimination, harassment, and violence in school. As the Trump Administration and its allies undermine Title IX of the Education Amendments of 1972 and other key protections, students who face discrimination will turn to the courts for protection.

Here are some cases affecting students' civil rights that Trump's remade judiciary will decide:

- Whether Title IX protects LGBTQ students against discrimination.³
- When, under Title IX, schools are liable for failing to address sexual misconduct by students or employees.⁴
- Whether the Trump Administration can roll back Title IX protections for survivors of sexual assault and other forms of sexual harassment by discouraging reporting, shielding schools from accountability, and favoring harassers over survivors.⁵
- Whether institutions of higher education can continue to pursue racial diversity and the educational benefits of such diversity through their admissions policies.⁶

WORKPLACE PROTECTIONS

Every worker deserves a workplace free from discrimination, including harassment and pay discrimination. Federal laws, including Title VII of the Civil Rights Act, protect against sex discrimination in the workplace, including the right to be free from sexual harassment and the right to receive equal pay for equal work. As the Trump Administration and its allies continue to attack anti-discrimination protections, workers who face discrimination will turn to the courts for protection.

Here are some of the workplace issues that courts, including the Supreme Court, will soon decide:

- Whether existing Title VII protections against sex-based discrimination include LGBTQ individuals.⁷
- Whether employers can use prior salary to set pay and justify paying a man more than a woman for the same job.⁸
- When employers can force workers experiencing discrimination or sexual harassment into arbitration, rather than allowing them to seek justice through the courts.⁹

ACCESS TO HEALTH CARE, INCLUDING ABORTION

All people deserve access to health care, including abortion. Laws and programs like Medicaid, the Title X family planning program, and the Affordable Care Act (ACA) have helped increase women's access to health care. And yet, health care is under attack, from the Trump Administration proposing regulations that would gut these federal laws to anti-abortion legislators passing unconstitutional abortion bans and restrictions. In the face of these attempts, those who need reproductive health care or access to affordable, comprehensive, high-quality health care will turn to the courts for justice.

Here are some of the health care issues that courts, including the Supreme Court, will soon decide:¹⁰

- Whether the ACA – which expanded health coverage to millions of women and families – will be declared unconstitutional.¹¹
- Whether the ACA's existing non-discrimination protection will be rolled back, allowing discrimination in health care against transgender individuals and those seeking reproductive health care.¹²
- Whether the Trump Administration can allow health care professionals – including a hospital's board of directors or receptionists – to deny patients critical care.¹³
- Whether the Trump Administration can allow virtually any employer or university to deny insurance coverage of birth control to employees and students based on religious or moral beliefs.¹⁴
- Whether the Trump Administration can gag providers in the Title X family planning program, preventing them from providing critical information regarding a patient's health.¹⁵
- Whether the Trump Administration can exclude health care providers from key federal programs if they also provide abortion.¹⁶
- Whether anti-abortion state legislators will be successful in enacting unconstitutional abortion restrictions and outright bans on abortion.¹⁷

CONCLUSION

Since January 2017, the Trump Administration and its allies have waged a systematic attack on gender justice, including attacking our access to health care, protections from sexual harassment, equal opportunity in the workplace and schools, and economic security for all. With newly-confirmed extremist Trump judges currently on the bench, the Trump Administration's discriminatory agenda may cause long-lasting damage to our most fundamental rights and freedoms.

INCOME SECURITY AND ECONOMIC JUSTICE

All people deserve to be financially secure. Unfortunately, a gaping gender wage gap, disproportionate responsibility for unpaid caregiving, discrimination, and other factors mean that women, and in particular women of color and women-headed households, are disproportionately impacted by poverty. When faced with such economic hardship, federal income security programs such as Medicaid, nutrition assistance, and affordable housing help women and families meet their basic needs. Unfortunately, the Trump Administration has unilaterally been issuing draconian and illegal rules to limit access to those programs – or punish those who seek the supports that are available to them. Those who are being harmed by these punitive changes will look to the courts to block these rules.

Here are some issues affecting low-income people that Trump's Judges could consider:

- Whether the Trump Administration can redefine longstanding standards under our immigration laws to force families to decide between accepting federal health coverage, or food or housing assistance or being separated from their families.¹⁸
- Whether the Trump Administration can override existing fair housing protections and make it harder to prove discrimination.¹⁹
- Whether the Trump Administration can radically restructure the Medicaid program and cause thousands to lose coverage and impair individuals' health and ability to work.²⁰

SOURCES

1. U.S. COURTS, CONFIRMATION LISTING, JUD. CONFIRMATIONS (Updated Oct. 1, 2019) (providing that throughout the Trump Administration 152 federal judges, including 2 Supreme Court Justices and 43 court of appeals judges, have been confirmed into lifetime positions on the federal judiciary), <https://www.uscourts.gov/judges-judgeships/judicial-vacancies/confirmation-listing>.
2. CONG. RES. SERVICES, JUD. NOMINATIONS STAT. & ANALYSIS: U.S. DISTRICT & CIR. CTS., 1977–2018 (2019), <https://fas.org/sgp/crs/misc/R45622.pdf>.
3. See, e.g., *Parents for Privacy v. Barr Sch. Dist.*, No. 18-35708 (9th Cir.); *Adams v. St. John's Cty. Sch. Bd.*, No. 18-13592 (11th Cir.).
4. See, e.g., *Doe v. Univ. of Ky.*, No. 19-5126 (6th Cir.); *Weckhorst v. Kansas State University*, No. 17-3208 (10th Cir.); *Kesterson v. Kent State University*, No. 18-4200 (6th Cir.).
5. See, e.g., *SurvJustice v. Department of Education*, No. 3:18-cv-00535-JSC (N.D. Cal.).
6. See, e.g., *Students for Fair Admissions v. Harvard*, No. 1:14-cv-14176-ADB (D. Mass. 2017); *Students for Fair Admissions v. UNC*, No. 1:14-cv-954 (M.D.N.C. 2017).
7. See *Altitude Express, Inc. v. Zarda*, 883 F.3d 100 (2d. Cir. 2018), cert. granted, 139 S.Ct. 1599 (U.S. Apr. 22, 2019) (No. 17-1623); *R.G. & G.R. Harris Funeral Homes Inc. v. E.E.O.C.*, 884 F.3d 560 (6th Cir. 2018), cert. granted in part, 139 S.Ct. 1599 (U.S. Apr. 22, 2019) (No. 18-107); *Bostock v. Clayton Cty., Georgia*, 723 F. App'x 964 (11th Cir. 2018), cert. granted, 139 S.Ct. 1599 (U.S. Apr. 22, 2019) (No. 17-1618).
8. *Rizo v. Yovino*, No. 16-15372 (9th Cir. 2019).
9. See, e.g., *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 527 (2019); *Lamps Plus v. Varela*, 139 S. Ct. 1407, 1418 (2019).
10. See *June Med. Services v. Gee*, 905 F.3d 787 (5th Cir. 2018) cert. granted (U.S. Oct. 4, 2019) (No. 18-1323); *Planned Parenthood of Ind. & Ky., Inc., v. Comm'r of the Ind. State Dep't of Health, et al.*, 896 F.3d 809 (7th Cir. 2018) petition for cert. docketed (U.S. Feb. 4, 2019) (No. 18-1019); *Price v. City of Chicago*, 915 F.3d 1107 (7th Cir. 2019) petition for cert. docketed (U.S. June 6, 2019)(No. 18-1516); *EMW Women's Surgical Center, P.S.C. et al. v. Adam Meier*, 373 F. Supp.3d 807 (6th Cir. 2019) petition for cert. docketed (U.S. May 15, 2019) (No. 19-417); *Little Sisters of the Poor Saint Peters and Paul Home v. Pennsylvania, et al.*, 930 F.3d 543 (3rd Cir. 2019) petition for cert. docketed (U.S. Oct 2, 2019) (No. 19-431); *Donald J. Trump v. Pennsylvania, et al.*, 930 F.3d 543 (3rd Cir. 2019) petition for cert. docketed (U.S. Oct 7, 2019) (No. 19-454); *Planned Parenthood of Ind. & Ky, Inc. v. Adams, et al.*, 937 F.3d 973 (7th Cir. 2019) petition for cert. docketed (U.S. Dec. 27, 2019) (No. 17-2428); *Texas v. United States*, 945 F.3d 355 (5th Cir. 2019) petition for cert. docketed (U.S. Jan. 3, 2020).
11. *Texas v. United States*, 945 F.3d 355 (5th Cir. 2019) petition for cert. docketed (U.S. Jan. 3, 2020).
12. See, e.g., *Franciscan All., Inc. v. Azar*, No. 7:16-cv-00108-O (N.D. Tex. 2017).
13. See, e.g., *New York v. U.S. Dep't of Health & Human Servs.*, 1:19-cv-04676-PAE (S.D.N.Y.); *Planned Parenthood Federation of America v. Azar*, 1:19-cv-05433-PAE (S.D.N.Y.); *National Family Planning and Reproductive Health Ass'n v. Azar*, 1:19-cv-05435-PAE (S.D.N.Y.).
14. See, e.g., *California v. Health & Human Servs.*, No. 19-15072, No. 19-15118, No. 19-15150 (9th Cir.).
15. See, e.g., *California by & through Becerra v. Azar*, No. 19-15974, No. 19-15979, No. 19-35386, No. 19-35394 (9th Cir.).
16. See, e.g., *Planned Parenthood of Gulf Coast, Inc. v. Gee*, 862 F.3d 445 (5th Cir. 2017), cert. denied, 139 S. Ct. 408 (2018).
17. This includes cases regarding reasons bans: see, e.g., *Box v. Planned Parenthood of Ind. and Ky., Inc.*, 139 S.Ct. 1780, 1781 (2019); bans on a certain point of pregnancy: see, e.g., *Jackson Women's Health Org. v. Dobbs*, No. 18-60868 (5th Cir.); bans on certain procedures: see, e.g., *Frederick W. Hopkins v. Larry Jegley, et al.*, No. 17-2879 (8th Cir.); and other medically unnecessary and burdensome requirements: see, e.g., *Planned Parenthood of Ind. & Ky., Inc., v. Comm'r of the Ind. State Dep't of Health, et al.*, 896 F.3d 809 (7th Cir. 2018) petition for cert. docketed (U.S. Feb. 4, 2019) (No. 18-1019).
18. See, e.g., *La Clinica De La Raza, et al. v. Trump*, No. 4:19-cv-04980-PJH (N.D. Cal.).
19. See Proposed Rule HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, 84 FR 42854 (Oct. 18, 2019), <https://www.federalregister.gov/documents/2019/08/19/2019-17542/huds-implementation-of-the-fair-housing-acts-disparate-impact-standard>. If finalized, it could conflict with *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 (2015).
20. See e.g., *Gresham v. Azar*, No. 19-5096 (D.C. Cir.).