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Separation of Church and Bodily Autonomy

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Payten Slaughter ✍ Feb 8 5 min read

Separation of Church and Bodily Autonomy

Around the age of twenty-two, Nicole Lemley went to her gynecologist with hopes of bringing permanency to her preference of never having children.[1] Rather than provide information about sterilization, Nicole's doctor laughed at her for not liking children enough to give up her life to become a mom, and told her they would not undertake the procedure.[2] With the passing nearly fifty years ago of the Sterilization Act of 1974 allowing for women twenty-one years and older to consent to sterilization, Nicole's story should be a rare experience.[3] However, Doctor Christina Richie, a lecturer of philosophy and ethics of technology who has written multiple pieces about reproductive technologies,[4] has "yet to come across a story of a woman without children who was granted sterilization on a first request." [5] Though a 2011 survey showed that 98% of gynecologists report that they are willing to help a woman procure a tubal ligation – a common sterilization procedure – factors such as number of existing children, the woman's age, and consent of husband affect whether the physician would attempt to dissuade the sterilization.[6] A significant reason that physicians will deny sterilization is this belief that a woman will regret her permanent choice, citing studies showing anywhere from 1-26% of women regretting sterilization.[7] However, this statistic may be inflated because of the inherent difficulties in measuring a concept as abstract as "regret." [8]

Another main effect on gynecologists dissuading sterilization is religion, and this barrier explicitly makes its way into the law.[9] The First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the exercise thereof." [10] A law does not have to deem a religion supreme to violate the Establishment Clause "but nevertheless be one 'respecting' that end in the sense of being a step that could lead to such establishment and hence offend the First Amendment." [11] On the other hand, the Free Exercise Clause protects the right to practice religion "so long as the practice does not run afoul of a 'public morals' or a compelling governmental interest." [12] Both of these clauses in the First Amendment support healthcare providers' capacity to practice their religion while obstructing medical choices a woman can make for her own body. Healthcare providers are also protected when it comes to the freedom to exercise their religion through multiple federal laws.[13] First are the Church Amendments, which allow entities and individuals to deny performing or assistance in abortion and sterilization procedures due to contrary religious or moral beliefs without being discriminated against for their participation or nonparticipation.[14] Next, is Title VII of the Civil Rights Act of 1964, which prohibits employers from discriminating against employees due to their religion and religious "based objections to perform specific functions" of their job.[15]

Along with the federal laws discussed, "eighteen states allow some healthcare providers to refuse to provide sterilization services" which includes individual providers and healthcare institutions.[16] Due to these laws

prioritizing healthcare providers and their religious beliefs, bodily autonomy is ignored leaving many women struggling to easily obtain sterilization.[17] One solution is for a lawsuit to be brought claiming that the legislation that allows for healthcare professionals to refuse to perform a sterilization procedures on the basis of religious or moral grounds is discriminatory under the Fourteenth Amendment. The Fourteenth Amendment, which includes the Equal Protection Clause and the Due Process Clause, states that “no State shall make or enforce any law which shall abridge the privileges or immunities of citizens... nor shall any State deprive any person of life, liberty, or property without due process of the law; nor deny to any person within its jurisdiction the equal protection of the laws.” [18] To state a claim for an Equal Protection Clause violation, the plaintiff must first establish that the government, including a government actor, intentionally discriminated against them on the basis of race, gender, or national origin.[19] There are three ways to show the intention of the government, but the relevant circumstance in this case is to look at whether a facially neutral law was made under a discriminatory motivation and its application created a discriminatory effect. [20] Though these statutes that allow for refusal may seem facially neutral since both men and women can receive sterilization, the negative effects are more prevalent for women due to sexism and the outdated importance society puts on motherhood.

While the United States’ endeavor to protect religion can be seen as commendable and necessary at times, religion should have a very limited place in the medical field, especially when the allowance of sterilization refusals hinders women’s medical treatment. Nicole wanted a permanent solution for her desire to never have kids, but instead, she had an intrauterine device (IUD) implanted—not permanent and less reliable than sterilization.[21] Though her IUD will likely prevent pregnancy for ten years, she still has many concerns that she would not have if granted a tubal ligation.[22] She worries about: whether the IUD will become embedded into her body; whether she will become pregnant if it fails; and whether she will pass down certain genetic traits if she does become pregnant.[23] Nicole’s ex-gynecologist, recommended revisiting their conversation after her IUD is taken out; she will be thirty-three years old.[24]

[1] Email from Nicole Lemley (Nov. 1, 2021, 03:16 EST) (on file with author)

[2] Email from Nicole Lemley, *supra* note 1.

[3] Cristina Richie, *Voluntary Sterilization for Childfree Women: Understanding Patient Profiles, Evaluating Accessibility, Examining Legislation*, 43 *Hastings Ctr. Rep.* 36, 41 (2013).

[4] Cristina Richie, LINKEDIN, <https://www.linkedin.com/in/cristina-richie-phd-29685020/?originalSubdomain=uk> (last visited Jan. 24, 2022).

[5] Richie, *supra* note 3, at 39.

[6] R.E. Lawrence., K.A. Rasinski, J.D. Yoon, F.A. Curlin, *Factors influencing physicians’ advice about female sterilization in USA: a national survey*, *HUM. REPROD.* (2011), <https://pubmed.ncbi.nlm.nih.gov/20961942/>.

[7] Richie, *supra* note 3, at 39.

[8] *Sterilization of Women: Ethical Issues and Considerations*, 695 *AM. COLL. OBSTETRICIANS & GYNCEOLOGISTS* 1 (2007); Deborah Bartz and James A Greenberg, *Sterilization in the United States*, 1(1) *REV. OBSTETRICS &*

GYNECOLOGY 23 (2008).

[9] R.E. Lawrence., K.A. Rasinski, J.D. Yoon, F.A. Curlin *supra* note 6; *Refusing to Provide Healthcare Services*, GUTTMACHER INSTITUTE, <https://www.guttmacher.org/state-policy/explore/refusing-provide-health-services>, (last visited Dec. 28, 2021).

[10] U.S. CONST. amend. XIV, § 2.

[11] *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

[12] *First Amendment and Religion*, UNITED STATES COURTS, <https://www.uscourts.gov/educational-resources/educational-activities/first-amendment-and-religion>, (last visited Dec. 30, 2021)

[13] *Conscience Protections for Health Care Providers*, U.S. DEP'T OF HEALTH AND HUM. SERV., <https://www.hhs.gov/conscience/conscience-protections/index.html>, (last visited Dec. 30, 2021).

[14] *Conscience Protections for Health Care Providers*, U.S. DEP'T OF HEALTH AND HUM. SERV., <https://www.hhs.gov/conscience/conscience-protections/index.html>, (last visited Dec. 30, 2021).

[15] *Refusing to Provide Healthcare Services*, GUTTMACHER INSTITUTE, <https://www.guttmacher.org/state-policy/explore/refusing-provide-health-services>, (last visited Dec. 28, 2021).

[16] *Refusing to Provide Healthcare Services*, GUTTMACHER INSTITUTE, <https://www.guttmacher.org/state-policy/explore/refusing-provide-health-services>, (last visited Dec. 28, 2021).

[17] Richie, *supra* note 3.

[18] U.S. Const. amend. XIV, § 1.

[19] *Hayden v. Cty. of Nassau*, 180 F.3d 42, 48 (2d Cir. 1999)

[20] *Id.*

[21] Email from Nicole Lemley, *supra* note 1; *IUD*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/learn/birth-control/iud>, (last visited Oct. 31, 2021).

[22] Telephone Interview with Nicole Lemley (Nov. 1 2021).

[23] *Id.*

[24] Email from Nicole Lemley, *supra* note 1.