

Issue Brief: Women's Rights and the First Amendment

Key Words: First Amendment, pornography, abortion, FACE, content-neutrality, NY Domestic Relations Law

Description: For many people the First Amendment represents the spirit of American liberty. It promises to protect citizens' freedom to exercise their own religion, their freedom of speech and of assembly, their freedom of the press, and of lastly of petition, but when the interests of one's group's freedoms contest with another group's rights, conflict arises. This has frequently been the case with women's rights, and debates over issues ranging from pornography to abortion, and even including religious modesty, persist today.

Key Points:

- The debate over pornography, and whether or not it should be seen as an expression of freedom protected by the First Amendment, has been being fought for decades.
- The feminist view on pornography, that it promotes violence against women, depends largely upon the interpretation of the First Amendment that states it does not apply if the expression in question does grave harm to others.
- States imposing Right to Know laws upon physicians and patients have been attacked for violating the First Amendment's protection of free speech, in that doctors are forced to engage in a particular dialogue with their patient.
- Laws, such as FACE, that are meant to protect women seeking abortion have been criticized for imposing on the free speech allowed to pro-life protesters under the First Amendment.
- Because the regulation of religion in New York was created to help women who were virtually powerless in seeking divorce from their husbands, many criticize the violation of the First Amendment, but at the same time, the law has not been contested.

Brief:

Pornography

Pornography has always been controversial, but the rise of the feminist movement in the 1970's brought the topic to the forefront of politics with the claim that it promotes violence against women. This claim is founded in the idea that porn rarely depicts women

as having any kind of agency in the sexual acts it depicts, and because this idea is universally portrayed, it sends the message to men that only their desire matters, and that they have the right to women's bodies for their own pleasure, a message that translates into the real world as rape (Griffin, 24). While it may be argued that pornography is a form of sexual expression and thereby protected under the First Amendment, others protest that because of its obscene nature and the potential threat it poses to women, the nation is not required to enforce its protection over the industry (Griffin, 46). However, this argument, too, has its faults, due to Supreme Court rulings *Chaplinsky v. New Hampshire* and *Cohen v. California*. These rulings decided that in order for speech to be unprotected, it must be spoken aloud in public, and that it must be addressed directly to a specific person (Griffin, 46). Because pornography is most commonly found as the depiction of sexual acts, it is difficult to make it illegal based upon the aforementioned bounds. Other attempts at politicizing pornography, i.e. decency laws, outright bans, and the criminalization of workers in the sex industry, have been largely unsuccessful. Women's groups today continue to battle against the perceived violence promoted by the porn industry, both through the context of the First Amendment, and outside of it.



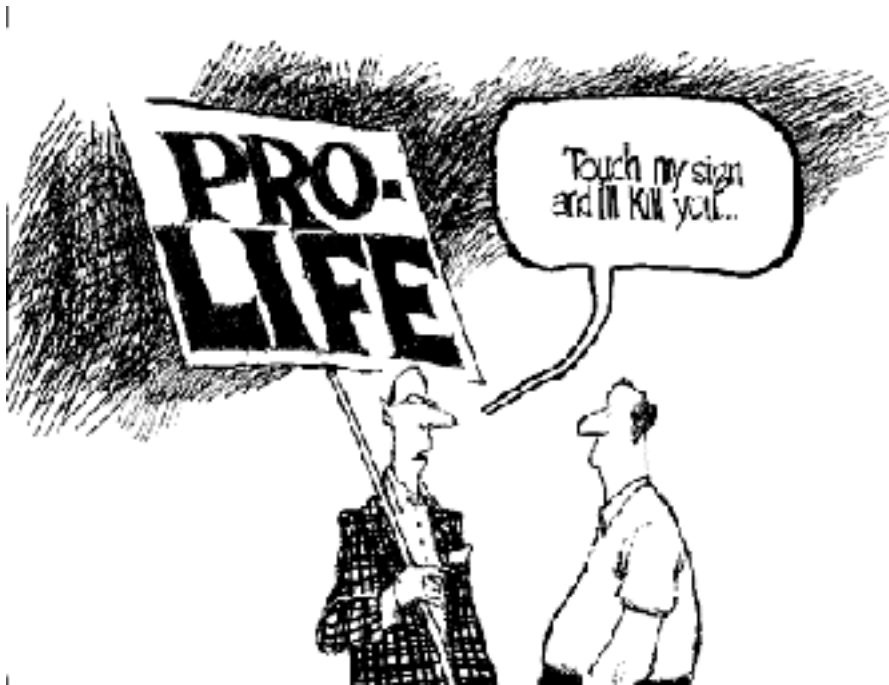
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Abortion

First Amendment rights have also been used as an argument in issues of women's health, abortion in particular. Physicians have protested against states requiring them to perform ultrasounds on women seeking abortions and mandating that they describe and show the images to their patients. The focus of the physician's claim lies in political speech and that fact that the government is mandating the type of speech in which they must engage with their patients (Gaylord, 599). Each court invoked the case of *Planned*

Parenthood of Southeastern Pennsylvania v. Casey, a case that forbids abortion laws that place “undue burden” on a woman seeking an abortion. Despite this commonality, states ended up coming to different conclusions on whether the ultrasound requirements were constitutional or not (Gaylord, 599).

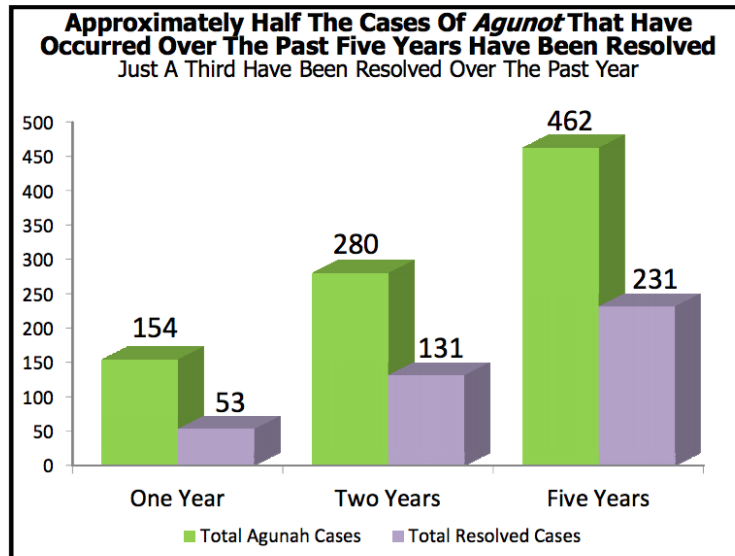
The right of free speech is also debated when determining how far abortion protesters are allowed to go in their attempt to persuade women seeking abortions. The Freedom of Access to Clinic Entrances (FACE) Act requires that, if asked, protesters must provide those entering abortion clinics an eight-foot radius of personal space, in order to ensure the safety and privacy of those going into the facilities (Field, 546). This law has been contested by pro-life forces, on the grounds that because FACE is not content-neutral – in that it specifically targets protesters at abortion clinics - they are being targeted, discriminated against, and denied their First Amendment right of free speech.



<http://images.sodahead.com/blogs/0002311> 1

Religion

In New York, the enforcement of the NY Domestic Relations Law has created outrage, in that it crosses into the territory of regulating religion, an act prohibited by the First Amendment. According to Jewish law, a religious divorce can only occur if the husband has delivered a bill of divorce, known as a *get*, to his wife. It is not uncommon for a husband to withhold a *get* from his wife as a means of leverage in a divorce (Feldman, 139). Because of this, many Jewish women, over 15,000 in New York alone, are able to receive a legal divorce, but are unable to begin a new relationship without being ostracized in the Jewish community. New York passed the NY Domestic Relations Law, which, in some cases, requires a Jewish husband to give a *get* to his wife before the couple can become legally divorced (Feldman, 140). This law was passed in an attempt to help these women, but in doing so, they have regulated how religious practices may be carried out and have thereby violated the First Amendment. Despite this, the law has yet to be contested (Feldman, 152).



<http://www.bjpa.org/Publications/download1>

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Relevant Web Sites:

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<http://www.gpo.gov/fdsys/pkg/CDOC-110hdoc50/pdf/CDOC-110hdoc50.pdf>

The Library of Congress

<http://thomas.loc.gov/home/thomas.php>