



Federal Protection for Women Seeking to Exercise Their Right to Reproductive Freedom

Congress Acts

- After the Civil War, Congress passed the Civil Rights Act of 1871 (the so-called Ku Klux Klan Act) to prohibit mobs from preventing Americans from exercising their constitutional rights. The Act provides a federal cause of action against people who conspire to deprive “any person or class of persons of the equal protection of the laws....”

John Roberts Advocates to Narrow the Civil Rights Act

- In the 1980s and early 1990s, while exercising their constitutional right to reproductive choice, women faced orchestrated blockades, intimidation and violence at women’s reproductive health clinics. In *Bray v. Alexandria Women’s Health Clinic*, women and reproductive health clinics victimized by these blockades invoked the Civil Rights Act of 1871 in a lawsuit against Operation Rescue.
- As Principal Deputy Solicitor General in the first Bush Administration, Roberts co-authored an *amicus curiae* brief and argued in the Supreme Court in *Bray* (a case in which the United States government was not even a party) in support of Operation Rescue, arguing that the blockaders’ conduct did not constitute discrimination against women, “even though only women can have abortions.” Therefore, argued Roberts, the Civil Rights Act did not apply and women whose access to clinics had been blocked had no right to turn to federal courts to protect their constitutional right to reproductive choice.
- The need for federal protection that Roberts sought to deny was demonstrated in an *amicus curiae* brief filed in the *Bray* case by Falls Church, Virginia. Falls Church recounted that, “Despite its best efforts, the police department of Falls Church was prevented by the overwhelming number of people involved in Operation Rescue from securing state and federal rights for women seeking entrance to the Commonwealth Women’s Clinic. ...The police force (even as supplemented at considerable cost by county and state law enforcement officers) was unable to ensure access to the clinic for many hours, during which several patients were unable to have scheduled abortions or receive even the simplest of gynecological services. Some suffered physical injury, locked captive in cars that could not move through the parking lot, or bunkered inside the clinic from which medical personnel seeking to treat them had been denied access.”

- While the *Bray* case was pending, Roberts defended the decision of the administration to weigh in on the side of Operation Rescue in another case in Wichita, Kansas, where a federal court had barred Operation Rescue from blockading clinics or physically harassing patients and staff. The federal district judge had determined that mob blockades involving hundreds and perhaps thousands of people had overwhelmed the resources of the city police who had made more than 2,700 arrests. An incensed Judge Kelly “lambasted the administration on two network television programs, saying he was ‘disgusted’ by what he saw as a ‘political’ action calling for a ‘license for mayhem.’” As he had in his brief in *Bray*, Roberts contended that “people who are against abortion are not discriminating against women. It’s a different issue.... We just think that the federal court is not the proper place for this case.”
- In 1993, the Supreme Court held in *Bray*, 6-3, that the Civil Rights Act of 1871 did not apply to women seeking to enforce their constitutional right to reproductive choice, since the blockaders’ opposition to abortion did not constitute discrimination against women. In so holding, the Supreme Court adopted John Roberts’ limiting view of this important civil rights law.

Congressional Fix

- In 1994, motivated in large measure by *Bray*, Congress passed the Freedom of Access to Clinic Entrances Act (FACE), to ensure that women seeking access to abortion clinics have the right to seek redress in federal court for protection from harassment and violence.
- The bipartisan Senate vote to pass the Freedom of Access to Clinic Entrances Act was 69-30, with 17 Republicans joining 52 Democrats in favor of passage.

Current Members of the Senate Who Cast Votes to Pass FACE

Akaka	Feinstein	McConnell
Baucus	Harkin	Mikulski
Biden	Hutchison	Murray
Bingaman	Inouye	Reed (House Member)
Bond	Jeffords	Reid
Boxer	Johnson (House Member)	Rockefeller
Byrd	Kennedy	Sarbanes
Conrad	Kerry	Schumer (House Member)
Dodd	Kohl	Snowe (House Member)
Domenici	Lautenberg	Specter
Dorgan	Leahy	Stevens
Durbin (House Member)	Levin	Wyden (House Member)
Feingold	Lieberman	