

Reproductive Health and the Law in  
North Carolina after *Dobbs v. Jackson*  
*Women's Health Organization*

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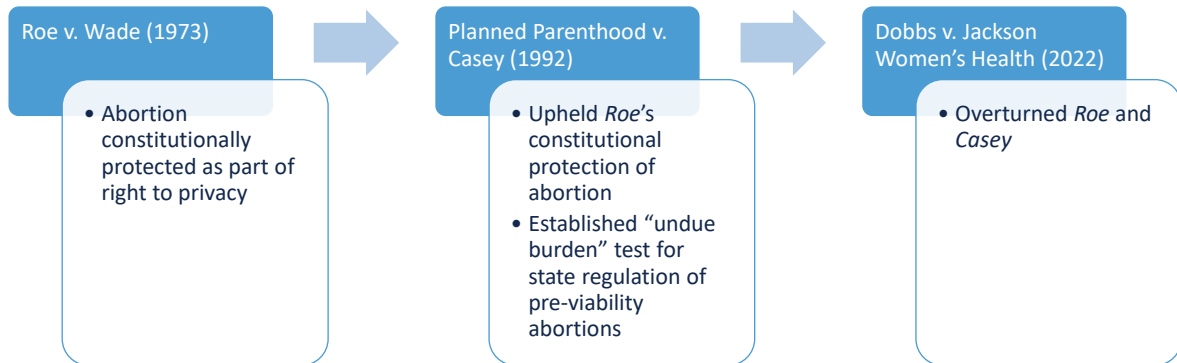
Abortion and the U.S.  
Supreme Court

1973-2022

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## Key Supreme Court abortion decisions

1973 TO 2022



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## Dobbs v. Jackson Women’s Health Organization

597 U.S. \_\_\_ (2022)

- In 2018, Mississippi adopted a law that banned abortion after 15 weeks of pregnancy. The law was challenged as a pre-viability abortion ban that was unconstitutional under previous Supreme Court cases. *Roe v. Wade* (1973); *Planned Parenthood of Southeastern Pa. v. Casey* (1992).
- In June 2022, the Supreme Court:
  - Upheld the Mississippi law by a 6-3 vote, and
  - Overruled *Roe* and *Casey* by a 5-4 vote.



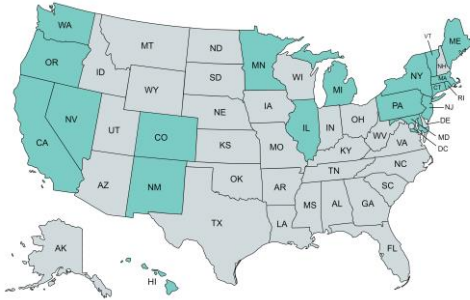
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## Immediate effect of *Dobbs*

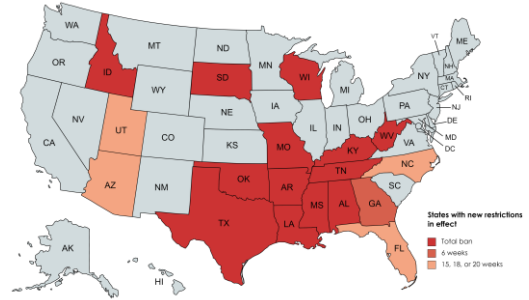
- There is no longer a right to abortion under the United States Constitution.
- States may adopt laws or state constitutional provisions protecting or restricting abortion.

States with new legal protections



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States with new legal restrictions



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**States with new restrictions in effect**  
 ■ Total ban  
 ■ 6 weeks  
 ■ 15, 18, or 20 weeks

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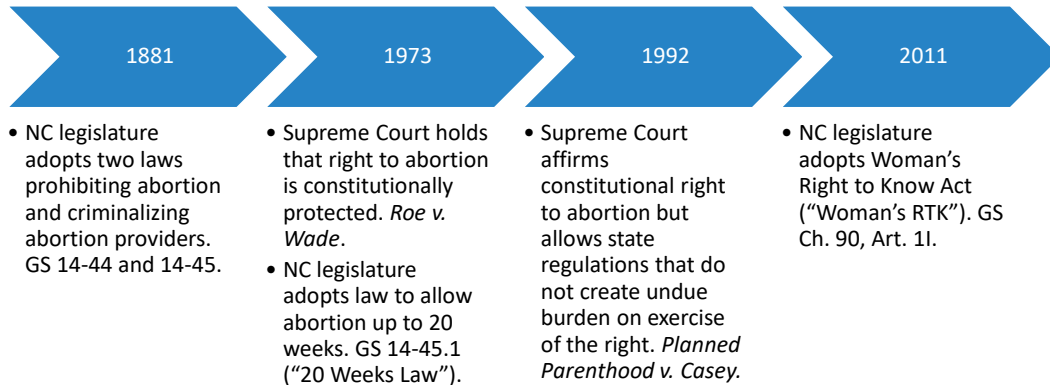


## Abortion Law in North Carolina

AS OF APRIL 14, 2023

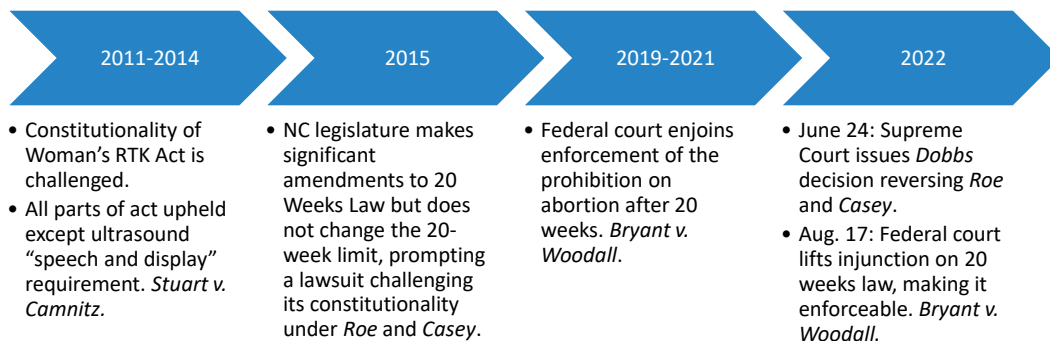
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## Timeline: Key dates & actions in NC abortion law



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## Timeline: Key dates & actions in NC abortion law (cont.)



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## Key provisions of 20 Weeks Law (criminal law)

### G.S. 14-45.1

- Abortion generally permitted up to 20 weeks of pregnancy.
- Abortion permitted after 20 weeks only in cases of medical emergency.
  - Medical emergency is defined as a condition which necessitates abortion to avert the pregnant individual's death, or to avoid a serious risk of substantial and irreversible physical impairment of a major bodily function (not including psychological or emotional conditions or claims or diagnoses that the pregnant individual will commit suicide or irreversible self-harm).
- Abortion must be performed by a qualified and licensed provider in a hospital or clinic certified by NC DHHS as a suitable facility for performance of abortions.

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## Key provisions of Woman's Right to Know Act

### G.S. CHAPTER 90, ARTICLE 11

#### **72 hour waiting period**

- Patient must consult with provider at least 72 hours before procedure, by phone or in person (with exceptions for medical emergencies as defined in the law).

#### **Provider must give certain information**

- Provider must give specified information including probable gestational age, medical risks of abortion, medical risks of carrying pregnancy to term, availability of imaging to view fetus, potential availability of public benefits, father's liability for child support, alternatives to abortion, and the right to withhold or withdraw consent to the abortion.

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## Key provisions of Woman’s Right to Know Act (cont.)

### G.S. CHAPTER 90, ARTICLE 11

#### NC DHHS must provide certain information

- NC DHHS must provide printed information and maintain a website with geographically indexed materials about public and private agencies and services that offer pregnancy assistance, including agencies that offer imaging services at no cost; and materials about fetal development at 2-week increments, including pictures or drawings.

#### Medication abortion

- The procedure for medication abortion, requiring the physician prescribing or dispensing the drug to be physically present in the same room as the patient when the first dose is taken, is found in the informed consent provisions of this law (GS 90-21.82(1)a.).

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## Adult (“parental”) consent for unemancipated minor’s abortion

### G.S. CHAPTER 90, ART. 1A, PART 2

- An unemancipated minor (under age 18) seeking an abortion must personally give consent to the abortion and also have the consent of one of the following adults:
  - A parent with legal custody of the minor,
  - A legal guardian or legal custodian of the minor,
  - A parent with whom the minor is living, or
  - A grandparent with whom the minor has been living for at least six months.
- In a medical emergency, the consent of one of the listed adults is not required.
- A pregnant minor may seek a waiver of the adult consent requirement from a district court judge (“judicial bypass”).
- Minors seeking abortion are subject to the requirements of the Woman’s Right to Know Act.

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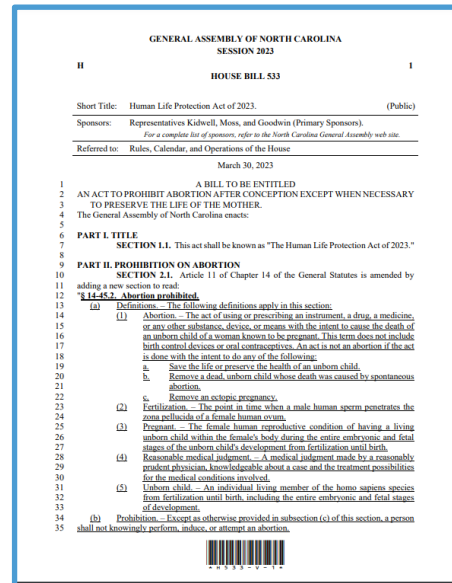


# Future of abortion law in NC?

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## Legislation introduced as of April 14, 2023

- **Protect abortion: RBG Act (HB 439 and SB 353)**
  - Amend 20 weeks law to allow abortion up to fetal viability
  - Codify protections of *Roe* and *Casey*
  - Introduced and referred to Rules, no further action
- **Restrict abortion: Human Life Protection Act (HB 533)**
  - Prohibit abortion at any stage of pregnancy
  - Exceptions for maternal physical medical conditions that create a risk of death or substantial impairment of a major bodily function, but in such cases physician must use procedure that provides the best opportunity for live birth
  - Criminal, civil, and disciplinary penalties for provider
  - Introduced and referred to Rules, no further action



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## Medication abortion

2000 TO APRIL 14, 2003

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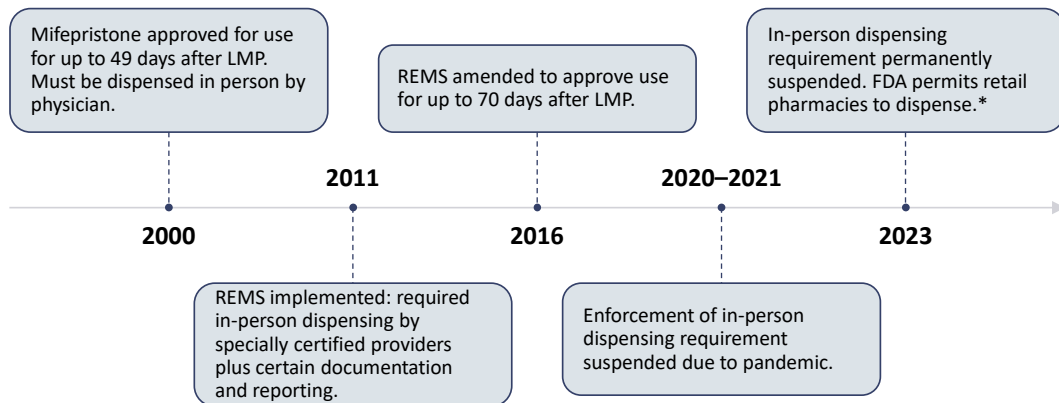
### FDA label & post-marketing adverse event information

Current regimen	<ul style="list-style-type: none"> <li>Initial dose of 200 mg mifepristone taken by mouth</li> <li>800 mcg misoprostol taken buccally 24-48 hours later</li> </ul>
Contraindications	<ul style="list-style-type: none"> <li>Known or suspected ectopic pregnancy, IUD in place, certain other medical conditions or use of certain medications</li> </ul>
Side effects	<ul style="list-style-type: none"> <li>Patients should anticipate uterine bleeding and cramping</li> <li>Nausea, vomiting, diarrhea, and headache are common</li> </ul>
Warnings and precautions	<ul style="list-style-type: none"> <li>Sepsis and infection;</li> <li>Excessive uterine bleeding</li> </ul>
Serious adverse events (September 2000 -June 2022)	<ul style="list-style-type: none"> <li>416 cases of blood loss requiring transfusion; 308 infections</li> <li>28 deaths (9 sepsis, 2 ruptured ectopic pregnancies, 17 other)</li> </ul>

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## Timeline: Mifepristone and the FDA



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## Medication abortion litigation update (through April 14, 2023)

### NORTH CAROLINA CASE

- Bryant v. Stein
  - Filed in federal court (M.D.N.C.) in January 2023
  - Physician is challenging NC's statutory requirements for medication abortion under the Woman's RTK Act (waiting period and in-person administration of mifepristone at regulated facility), arguing that NC's law is in conflict with and preempted by the FDA's regulations
  - Case is pending

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## Medication abortion litigation update (through April 14, 2023)

### OTHER FEDERAL CASES CHALLENGING FDA DECISION-MAKING

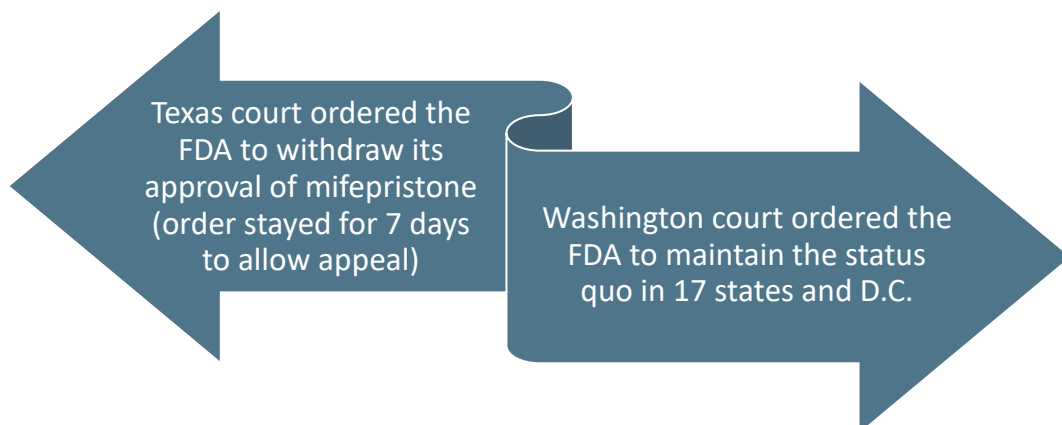
- Alliance for Hippocratic Medicine v. FDA
  - Filed in federal court (N.D.Tex.) in November 2022
  - Group of physicians challenging the FDA's approval of mifepristone and seeking a national injunction to take it off the market
- Washington v. FDA (filed in E.D.Wa., Feb. 2023)
  - Filed in federal court (E.D.Wa.) in February 2023
  - 17 states and the District of Columbia challenging FDA's new REMS and seeking injunction against any actions to remove mifepristone from market

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## April 7, 2023

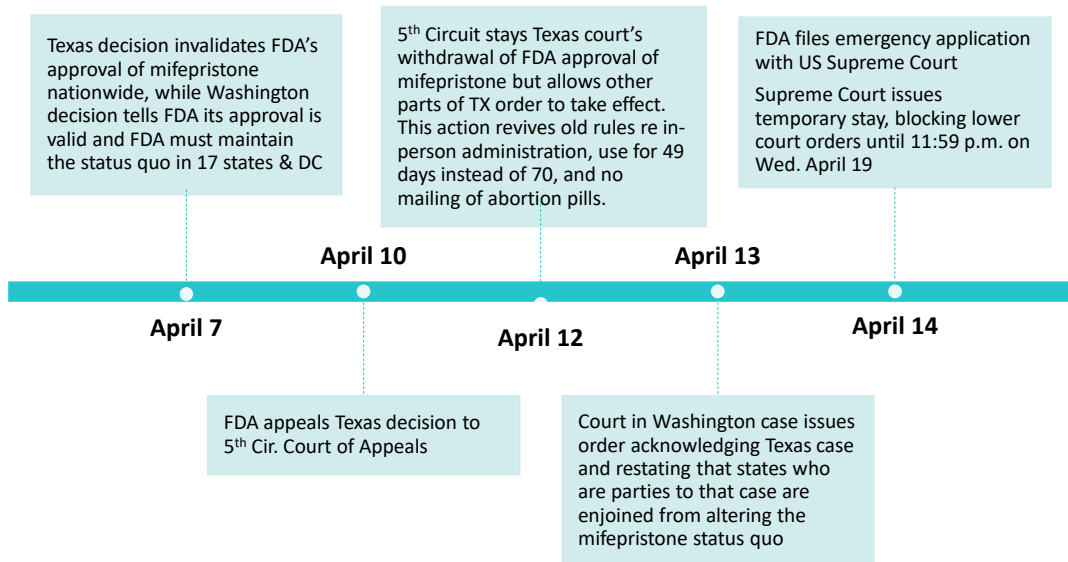
### FEDERAL COURTS ISSUE CONFLICTING DECISIONS



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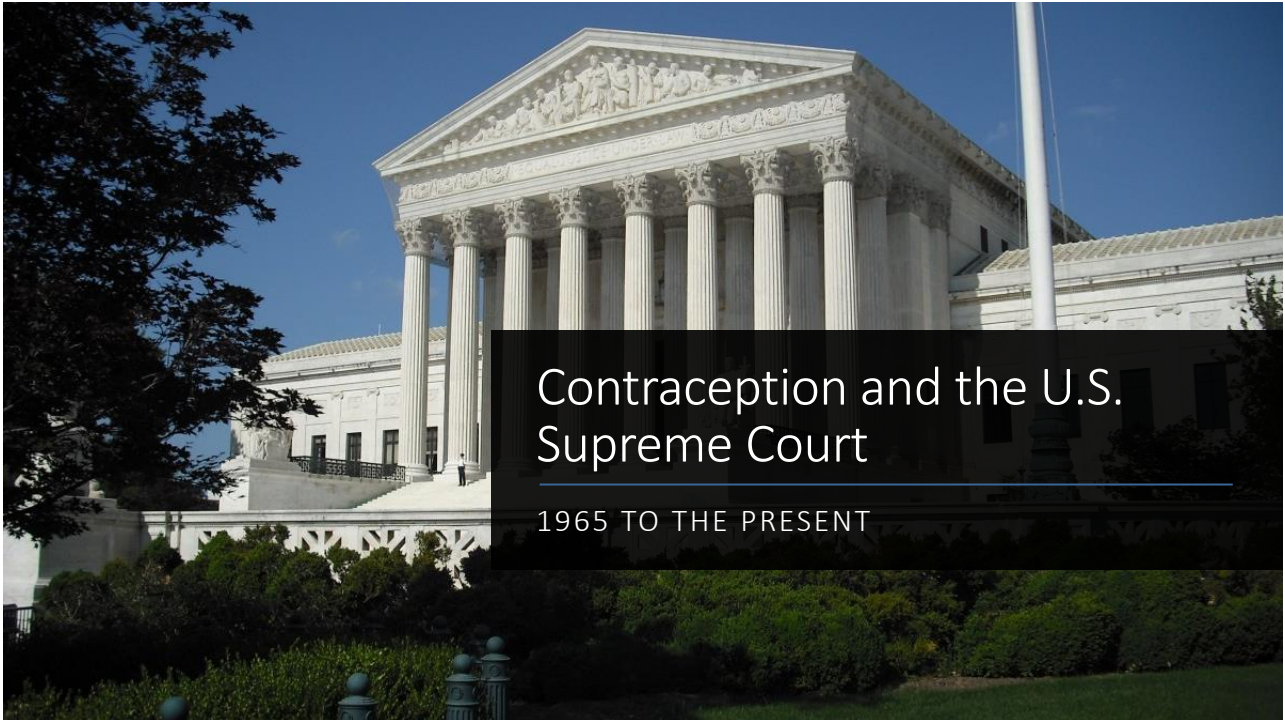
## April 7-14



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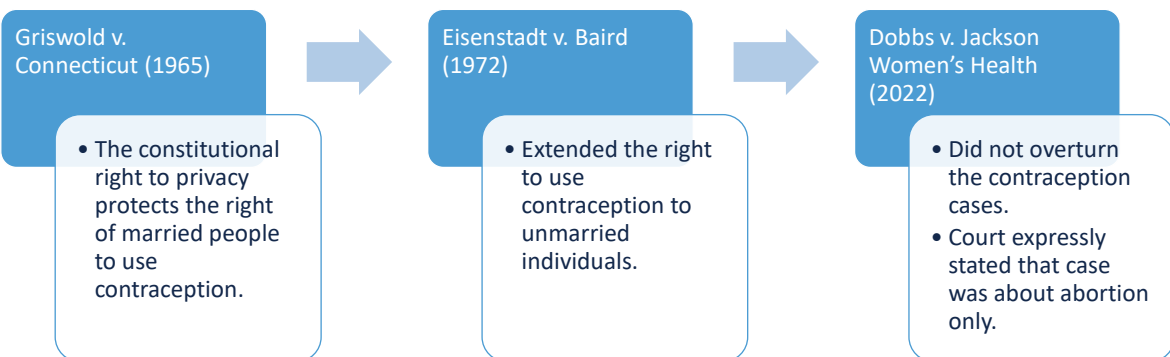
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## Key Supreme Court Contraception Decisions

1965 TO PRESENT



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*“[T]o ensure that our decision is not misunderstood or mischaracterized, we emphasize that our decision concerns the constitutional right to abortion and no other right. Nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion.”*

U.S. SUPREME COURT  
*DOBBS, SLIP OP. AT 66*

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## Emergency Contraception vs. Medication Abortion

Emergency Contraception	Medication Abortion
<ul style="list-style-type: none"> <li>• Intended to prevent pregnancy</li> <li>• Used after unprotected intercourse; contraindicated for pregnant patient</li> <li>• Available OTC or by prescription in accordance with FDA regulations</li> <li>• Not subject to NC Woman’s RTK Act requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Intended to terminate pregnancy</li> <li>• Used after pregnancy is established; not indicated if not pregnant</li> <li>• Available only by prescription and in accordance with FDA REMS program</li> <li>• Subject to NC Woman’s RTK Act requirements</li> </ul>

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## Contraception for Adolescents who are Minors

### NORTH CAROLINA MINOR'S CONSENT LAW: G.S. 90-21.5

- A minor may consent to medical health services for the prevention, diagnosis, or treatment of:
  - Sexually transmitted diseases or other reportable communicable diseases
  - Pregnancy (but minors may not receive abortions or sterilization on their own consent)
  - Emotional disturbance (but minors may not consent to admission to a 24-hour facility, except in emergencies)
  - Abuse of controlled substances or alcohol (with the same restriction on admission to 24-hour facilities)

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## Contraception for Adolescents who are Minors (cont.)

### TITLE X PROJECT GRANTS FOR FAMILY PLANNING SERVICES (42 C.F.R. PART 59)

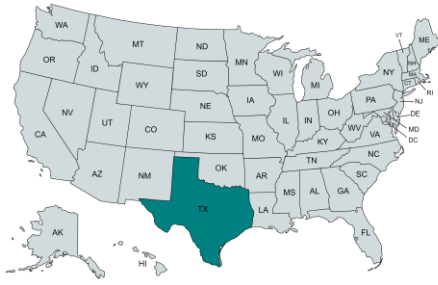
- Title X-funded family planning programs must :
  - Encourage family participation in the decision of minors to seek family planning services,
  - Provide counseling to minors on how to resist sexual coercion, and
  - Comply with state laws requiring reporting of child abuse, child molestation, sexual abuse, rape, or incest.
- However, Title X projects may not require a minor client to obtain the consent of a parent or guardian, nor may project staff notify a parent or guardian before or after a minor has requested or received Title X services.

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## Deanda v. Becerra

N.D. TEX., DEC. 2022



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- Lawsuit brought by a father in Texas who argued that Title X regulations regarding services to minors violated his parental rights under Texas state law and the US Constitution.
- District Court agreed and prohibited Title X projects in Texas only from serving minors without parental consent.
- U.S. DHHS is appealing to 5<sup>th</sup> Circuit Court of Appeals.

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## References

### ABORTION

#### Cases Cited in this Presentation

- *Roe v. Wade*, 410 U.S. 113 (1973).
- *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992).
- *Dobbs v. Jackson Women's Health Org.*, 597 U.S. \_\_\_ (2022), slip opinion available at [https://www.supremecourt.gov/opinions/21pdf/19-1392\\_gj37.pdf](https://www.supremecourt.gov/opinions/21pdf/19-1392_gj37.pdf).
- *Bryant v. Woodall*, 363 F. Supp.2d 611 (M.D.N.C. 2019), *aff'd*, 1 F.4<sup>th</sup> 280 (4<sup>th</sup> Cir. 2021), *vacated*, 2022 WL 3465380 (M.D.N.C. Aug. 17, 2022).
- *Stuart v. Camnitz*, 774 F.3d 238 (4<sup>th</sup> Cir. 2014).
- *Alliance for Hippocratic Medicine v. U.S. Food & Drug Administration*, 2023 WL 2825871 (N.D.Tex., Apr. 7, 2023), *stay granted in part* by 2023 WL 2913725 (5<sup>th</sup> Cir., Apr. 12, 2023), *stayed* by 2023 WL 2942266 (Apr. 14, 2023).
- *Washington v. U.S. Food & Drug Administration*, 2023 WL 2825861 (Apr. 7, 2023), *clarified* by 2023 WL 2941567 (Apr. 13, 2023).
- *Bryant v. Stein*, No. 23-cv-00077 (M.D.N.C. Jan. 25, 2023).

#### North Carolina Statutes Cited

- N.C. Gen. Stat. Ch. 14, Art. 11. Abortion and Kindred Offenses.
- N.C. Gen. Stat. Ch. 90, Art. 1A, Part 2. Parental or Judicial Consent for Abortion.
- N.C. Gen. Stat. Ch. 90, Art. 1I. Woman's Right to Know Act.

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# References (cont.)

## CONTRACEPTION

### Cases cited in this presentation

- *Griswold v. Connecticut*, 381 U.S. 479 (1965).
- *Eisenstadt v. Baird*, 405 U.S. 438 (1972).
- *Deanda v. Becerra*, 2022 WL 17843038 (N.D. Tex. Dec. 20, 2022).

### Statutes and regulations

- N.C. Gen. Stat. 90-21.5. Minor's Consent Sufficient for Certain Medical Health Services.
- Code of Fed. Reg. Title 42, Chapter I, Subchapter D, Part 59, Subpart A. Project Grants for Family Planning Services.

### Blog Post

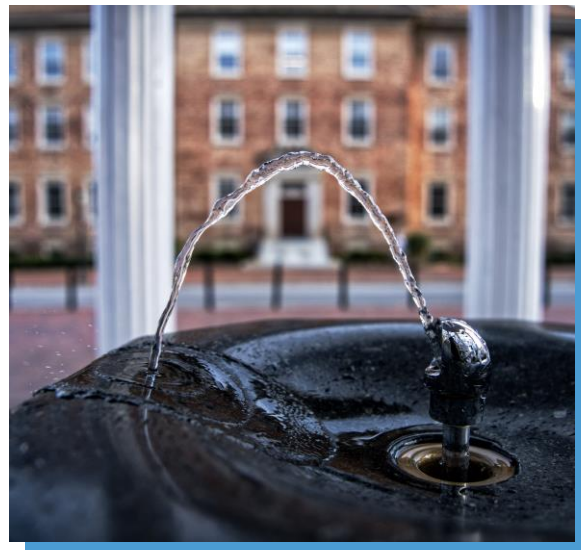
- Jill D. Moore, [Emergency Contraception vs. Medication Abortion: A Primer and Update on the FDA's Recent Actions](#) (December 28, 2022), available at [canons.sog.unc.edu](https://canons.sog.unc.edu).

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## CONTACT INFORMATION

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