April 23, 2013
HUFF POST POLITICS

Exploring the Legacies of *Roe* and *Lawrence*

Posted: 01/18/2013 12:08 pm

This year marks the anniversary of two powerhouse decisions of the U.S. Supreme Court: *Roe v. Wade*, in which a woman's right to have an abortion was established 40 years ago, and *Lawrence v. Texas*, which held 10 years ago that laws prohibiting same-sex sexual conduct are unconstitutional. Perhaps the most fascinating aspect of these decisions is that neither settled the broader social contests over reproductive rights or LGBT rights. Far from nine judges having the final say on these two controversial questions, the court's rulings instead sparked years of public debates and political mobilizations.

On Jan. 18 and 19, leading scholars and advocates will reflect on the impact of these landmark decisions and their relevance to current and future debates on reproductive and LGBT law and policy questions. "Liberty/Equality: The View From *Roe*'s 40th and *Lawrence*'s 10th Anniversaries" will feature a series of panel discussions tackling the major issues involving reproduction and sexuality that confront the Supreme Court -- and the American people -- today. The conference, held at UCLA School of Law and co-sponsored by the American Constitution Society, the Williams Institute, UCLA School of Law and the Information Society Project and the Program for the Study of Reproductive Justice at Yale Law School, brings together the nation's foremost experts on constitutional law, gender and sexuality.

The lively and uncertain legacies of *Roe* and *Lawrence* years and even decades after their announcement demonstrate how dramatically judicial decisions can influence the terms and parameters of subsequent policy debates on matters addressed by the Supreme Court.

This continuation of debate and deliberation is famously true of abortion. During the 2012 election cycle reproductive rights issues were front and center. The Republican Party fell short of its goal to win control of the Senate largely because conservative Republican candidates derailed their own campaigns with inaccurate and offensive comments about the relationship between rape and abortion. Even the much older issue of contraception played a significant role in the campaign. Some Republican candidates debated whether *Griswold v. Connecticut*, the 1965 Supreme Court decision protecting married couples' right to contraception under the rubric of privacy, was good law. Meanwhile, Democrats drew attention to Republicans' "war on women" and used attacks on reproductive freedom to mobilize voters.

And the contraception debate rages on. More than 40 cases have been filed in federal courts across the country by individuals, commercial businesses and nonprofits that seek an exemption from the Affordable Care Act's requirement that birth control be included in the standard benefits packages sold by insurance companies.

Similarly, the Supreme Court's decision in *Lawrence v. Texas* did not settle the debate over the moral worth and equal dignity of same-sex relationships. Instead, it fueled further deliberations and developments. Just months after *Lawrence*, the Massachusetts Supreme Judicial Court, in *Goodridge v. Department of Public Health*, ruled that same-sex couples could not constitutionally be excluded from marriage under state law. *Goodridge*, of course, did not decide the issue of marriage for same-sex couples outside Massachusetts. For the last 10 years, in states across the country, the marriage issue has wound its way through courts, legislatures, the ballot box and kitchen table debates.

It won't be long before the Supreme Court weighs in on this issue. In *United States v. Windsor*, the court will consider the constitutionality of Section 3 of the federal Defense of Marriage Act, which prohibits federal recognition for same-sex couples' valid, state-law marriages. In *Hollingsworth v. Perry*, the Supreme Court will determine the fate of California's Proposition 8, which added a prohibition on same-sex marriage to the state constitution. There are many possible results in these two cases. In both, the court has signaled that issues of jurisdiction and standing may determine the outcome. If the court reaches the merits in *Perry*, it may well rule on grounds that apply only to California, as the Ninth Circuit did in that case. However the cases are resolved, *Windsor* and *Perry* are likely to provide additional examples of the Supreme Court shaping and driving, rather than ending, debate and deliberation.

Douglas NeJaime is Associate Professor at Loyola Law School, Los Angeles.

Nan D. Hunter is Professor and Associate Dean at Georgetown Law Center.