Brrrr: Chilling Speech About and Access to Abortion in Idaho

BY BOWDITCH & DEWEY • DECEMBER 19, 2022

The Supreme Court's recent decision in *Dobbs v. Jackson Women's Health Organization*, which overturned the precedent in *Roe vs. Wade*, allows states to ban and restrict abortion. This decision has sent shockwaves through many industries, from healthcare providers who may be facing strict regulations and even criminal prohibitions on abortion, to private companies like Amazon that have enacted policies to support employees seeking an abortion. The decision will also impact higher educational institutions, many of which provide healthcare options and health insurance coverage to their students.

In preparing to face a post-*Dobbs* reality, institutions in states with restrictions on abortion might look to the experiences of public universities in Idaho. In 2021, Idaho passed the No Public Funds for Abortion Law, which prohibits public employees from "promoting" abortion. As a result, public health providers may not make referrals for abortion (even to providers out of state) or issue emergency contraception. In interpreting state law in this area, the University of Idaho has gone even further and has instructed staff that they may not distribute or promote birth control medications. The university has made this policy decision based on a law passed in 1867 – before Idaho was even a state – that bars "advertising" or dispensing birth control. The university has allowed its healthcare providers to continue to provide condoms to students, under the rationale that condoms may be used to prevent STI's as well as pregnancy, and has allowed on-campus clinics that are operated by third parties to continue to provide the birth control pill.

Refusing to provide birth control or abortions is not new in higher education – Catholic institutions have long taken the position that their providers should not provide medication for the purpose of birth control to unmarried students – but the University of Idaho's approach represents a much more restrictive approach to pregnancy on campus. First, while Catholic institutions do not provide medication for birth control, many allow their providers to prescribe the birth control pill for other medical conditions, and do not prohibit their community members from referring students to other organizations that will provide abortion and birth control. Furthermore, Idaho state laws criminalize the promotion of abortion or birth control, meaning that university providers who go against this guidance may be risking their own freedom.

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Only time will tell how far the University of Idaho or other state laws will go in restricting abortion, but the potential for suppression of speech and student freedom loom large. The university's guidance to its employees prohibits them from counseling students in favor of abortion, or from advocating for abortion in classroom discussions. As Idaho faculty and students have pointed out, this is directly antithetical to the freedom of inquiry and expression normally viewed as sacrosanct to institutions of higher education. The No Public Funds for Abortion Law could also technically bar students from sharing information about out-of-state abortion or birth control providers using school resources such as email, internet, and computers. Consequences could also be possible for out-of-state students, who might obtain a prescription for emergency contraception or other birth control-related healthcare in their home state and bring it back to campus with them.

Idaho's aggressive stance against birth control and abortion may impact its ability to recruit out-of-state students and faculty. While it seems that fetuses are extraordinarily safe at the university, it appears to many that the health of female students and the expression rights of community members may not be so protected.

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