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'Our Federal Constitution Doesn't Protect Us': How the Women's Law Project Redefined the Fight for Abortion Rights in Pennsylvania

PUBLISHED 7/30/2025 by **CARMEN RIOS**

"We got here because we have the gender ruling class desperately holding onto their privilege—using any

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means necessary,” said WLP executive director Susan Frietsche on the latest episode of *Looking Back, Moving Forward*. WLP has leveraged Pennsylvania’s ERA to advance gender equality in the state, including through a landmark victory defining antiabortion laws as unconstitutional.



(Sebastian Foltz / NEXTPittsburgh)

The [Women's Law Project](#) is a nonprofit public interest legal organization on a mission to eliminate gender bias and discrimination in Pennsylvania. Susan Frietsche, the WLP's executive director and legal director, [led the organization to a groundbreaking victory](#) in 2023 in [Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services](#)—a case brought by the Women's Law Project, Planned Parenthood, and the law firm Troutman Pepper and Cohen to the Pennsylvania Supreme Court that successfully [argued that the state's ban on Medicaid funding](#) was an [illegal form of sex discrimination](#) under its Equal Rights Amendment.

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Frietsche represents Pennsylvania abortion facilities in court and through other legal services, including strategic defense from antiabortion harassment and violence, and has represented women seeking abortion in dozens of judicial bypass cases. She is also an adjunct faculty member at the University of Pittsburgh School of Law, where she teaches reproductive law and policy, and gender and the law.

In the second episode of the *Ms. Studios* podcast [*Looking Back, Moving Forward*](#), Frietsche talked to me about the unique power states have, in this moment, to protect and enshrine abortion access, the role state ERAs can play in making that possible, and the constitutional dysfunction that led to *Dobbs*.

Inside the Femi

Looking Back, Moving Forward

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Frietsche is joined in this episode by constitutional law and health policy expert [Michele Goodwin](#), Massachusetts Gov. [Maura Healey](#), We Testify founder and executive director [Renee Bracey Sherman](#), and Plan C co-directors [Amy Merrill and Angie Jean-Marie](#). Together, [we explored the long history of women's fight for reproductive rights in the United States](#)—and articulated strategies for defending and expanding abortion access across the country.

This interview has been edited and re-organized for clarity and length.

Carmen Rios: You have spent a lifetime using the law to litigate issues of women's equality. What led you to the work that you do and kept you in the fight?

Susan Frietsche: My whole career has been just a matter of happenstance. I never wanted to be a lawyer. I just never saw myself pursuing this line of work—but I grew up in the '50s and '60s, and my experiences with horrifically sexist and discriminatory laws and the harm that I saw that those laws were inflicting on everyone I knew led me into a path of activism. Once I became involved in that, I saw that the law could be a really powerful tool to make some progress, and it has been over the past several decades.



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Rios: From a legal perspective, how do you think we reached this point that we're in? Is there a path you can trace that has led us to the calamity we find ourselves in right now?

Frietsche: Abortion rights, and reproductive autonomy rights, were never really secured in a comprehensive and coherent way under the federal Constitution, with our abortion rights really being grounded only in privacy and not also in equality principles. Even at the high point of protection under *Roe*, you were able to have parental consent laws and bans on Medicaid coverage of abortion—so the very people who most need constitutional protection, the least powerful people in our society, were not able to enjoy the promise of protection that they should've been able to.

We're starting from a point in the '70s where our legal system offers some, but really not enough, legal protection—and then followed decades of very concentrated relentless attacks that I believe were completely grounded in efforts to subordinate women and to really shore up a gender hierarchy that had men, and white men in particular, at the top, and women, and specifically women of color, and gender non-conforming folks, at the bottom.

That's what underlies abortion restrictions, and when you see it from that point of view, the passion with which our opponents pursued abortion restrictions kind of makes sense. They are fighting that hard obviously not because they care about life—if they did, they would be pursuing a whole lot of other policies instead—but because they really want to put in place this gender hierarchy and preserve their privilege.

We got here because we have the gender ruling class desperately holding onto their privilege using any means necessary.

“Even at the high point of protection under *Roe*... the very people who most need constitutional protection, the least powerful people in our society, were not able to enjoy the

promise of protection that they should've been able to.

- Susan Frietsche

Susan J. Frietsche accepting the "Unsung Hero" Award from the National Abortion Federation (NAF). (Courtesy of Women's Law Project)

Rios: And now we have *Dobbs* on the table and abortion access disappearing in a lot of states and a lot of communities, and we have the Trump administration, and Project 2025, and anti-choice groups hoping for a national abortion ban. Are there threats and challenges that you're anticipating seeing over the next four years?

Frietsche: It's almost too hard to keep up with it. I find it seriously overwhelming to keep up with everything that's

happening. There's a million developments. Every day there's a new development.

Very old legal doctrines that we never thought we would have to deal with again are suddenly on the table and actual real possibilities, and the best example of that probably is [the threatened revival of the Comstock Act](#) to prohibit the mailing or sending through common carrier of anything used in the course of abortion. That would really make abortion care in the United States extremely difficult if that were to be implemented.

Old laws that give authority over married women to their husbands. Who thought we would have to deal with anything like that ever again? [Yet we're seeing, in Texas](#), civil suits brought by husbands or even boyfriends against providers, and even the women themselves, for having an abortion in violation of a Texas law.

The thought that a state could prohibit interstate travel for the purpose of getting an abortion, that has not been a real threat before—[and now, it really is.](#)

There are many threats of all different kinds coming from all different areas, and new inventive ways of preventing people from getting medical care—and also the revival of very old ways that have been rejected in the past.

“This is the beginning of the flowering of state and local power to protect reproductive and sexual health and rights.

- Susan Frietsche

Rios: The law right now feels like it's being used against us in so many ways. How can it also be a tool for us at different levels to defend and advance reproductive freedom?

Frietsche: For so many decades, the federal courts and the federal government were the place to be if you wanted to protect individual rights and freedoms, and that is no longer the case.

Where we are now is, unfortunately, a moment in history where the federal court system looks like it's failing terribly at protecting people's rights and freedoms—so we're looking much more closely at using state power to do that.

Because activists and litigators relied so heavily, for so long, on the power of federal courts and federal institutions like the Department of Justice, the Department of Education, executive branch agencies that would help protect women's health, safety, and freedom—state level sources of protection are extremely underdeveloped. But they're there, [and they have really exciting potential](#).

Although the U.S. Supreme Court no longer protects abortion rights, the Federal Constitution is not the only constitution. States have constitutions too—and in the case of my own state, in Pennsylvania, our state constitution is older, it is broader, it is stronger and it is better than the U.S. Constitution, for a number of different reasons, not the least of which is that the Declaration of Individual Rights wasn't an afterthought tacked on at the end. It's the very first thing you see in the Pennsylvania Constitution, and it has an Equal Rights Amendment.

Does our federal Constitution have an Equal Rights Amendment? I would like to think so, but [it's still in question](#), at least.

There's no question that the Pennsylvania Constitution contains a very strong ERA that does protect against pregnancy discrimination, and it does protect against abortion restrictions. How strongly it does—we are still litigating that. But there is no question that this state constitutional provision that says that equality of rights under the law shall not be denied or abridged

on the basis of sex in the Commonwealth of Pennsylvania. That means you can't restrict abortion without an extremely compelling reason and no other way to advance that reason.

“That court back in 1985 laughed at us, really literally could not understand what we were saying, said that abortion has nothing to do with women’s equality.”

- Susan Frietsche


Rios: Let's turn to the *Allegheny* case. Talk to me a little bit about the journey of that case, how you got involved and why you took it on.

Frietsche: Going way back, the Women's Law Project was founded in 1974, and we were founded in Pennsylvania because Pennsylvania had an Equal Rights Amendment. The idea was we would take this new constitutional provision in our state constitution and implement it, and for years we went through statutes and regulations and all kinds of gendered laws—we even had a regulation that prohibited girls from being paper route carriers, there were lots of them—and just either sued or argued that they just were inoperative under our new state ERA and made many, many, changes.


The one important piece that we addressed in 1985 was the fact that we have a state statute that prohibits state money from being spent on abortion, and that includes state Medicaid dollars. That is the number one barrier to abortion in Pennsylvania. It is worse than any other provision in our Abortion Control Act. It's worse than the gestational limit. It's worse than the parental consent provision. It's worse than anything else that we have in terms of how many people it is actually harming and how badly it is harming them.

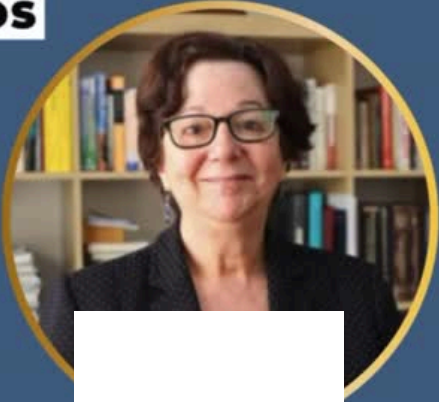
In 1985, we filed a case under the ERA saying this ban on Medicaid funding for abortion is a form of sex discrimination, men get all the Medicaid coverage they need. Women don't get coverage for this very important and common need that they have, and it has a devastating impact on their lives and their health and their futures. That court back in 1985 laughed at us, really literally could not understand what we were saying, said that abortion has nothing to do with women's equality.

Since then, the understanding generally that abortion has a lot to do with women's equality has really grown—in common understanding and also in case law. So, in 2019, we thought: We should try again. It's still a problem. It's still harming people really badly. We know more now than we did back in 1985 about the impact on people's lives and the law has evolved to have an equality prong to it. Let's try to revive the Equal Rights Amendment, because it had been interpreted to not apply any time there was a physical difference between a man and a woman. Basically any category dealing with pregnancy was not regarded as subject to the ERA. That's carving the heart out of that protection.


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Did you know we were founded in Pennsylvania specifically because the PA Constitution has an Equal Rights Amendment? Listen to WLP ED Sue Frietsche explain why the PA Constitution is stronger & better than the U.S. Constitution on the @ms_magazine podcast! 🔗 Full podcast link in stories 🔗 #Pennsylvania #ERA #PAERA #ReproductiveFreedom #lgbtq #StatePower

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It took years, but last January and January of 2024 we got a ruling that established the basic principles of law now

underlying the state Equal Rights Amendment, and we won—and we won big.

The court ruled that classifications that are based on physical characteristics that define the sexes, like the capacity for pregnancy, for example, thought to define in some ways the category of woman, that that is inherently a sex-based classification. When you're talking about that, you're talking about a sex-based category and all sex-based classifications, including those that flow from physical differences between sexes are subject to the ERA.

In plain language, abortion restrictions are presumed to be unconstitutional in Pennsylvania.

Now, there are some sex-based classifications, maybe some abortion-related restrictions that might be upheld under that standard, but the state would have to meet a very tough test. The state would have to show that the reason for that restriction is a compelling governmental interest and that restricting abortion is the only way that they can advance that interest. I don't think they can actually do that, but that's the question now on the table before the lower Pennsylvania courts.

Rios: What does this mean for other states that have Equal Rights Amendments?

Frietsche: Our law is not binding on any other state, but it can be persuasive.

When you look at the opinion that came out of the Pennsylvania Supreme Court, it is truly a masterpiece of legal research and reasoning, and it is extremely persuasive. It's hundreds of pages long. It is a treatise on how Equal Rights Amendments ought to function, and I think it has already. I know it will in the future have a very influential effect on other courts as they look at these kinds of provisions.

Our Equal Rights Amendment is from the '70s, and we've grown a lot since the '70s. We've grown a lot in our understanding of the intersectionality of oppression. The newer kinds of constitutional provisions that are being offered often are much broader than sex and more explicit. Others use a really full list of categories that are protected under their amendments. I think this is an area where we can expect some really great things out of state constitutions that in the past have just lain there really unused.

“ In Pennsylvania, our state constitution is older, it is broader, it is stronger and it is better than the U.S. Constitution, for a number of different reasons, not the least of which is that the Declaration of Individual Rights wasn't an afterthought tacked on at the end.

- Susan Frietsche

Rios: What is the importance of the state ERAs, especially when we know we don't have one on the national level as of now, and it might not be something that we get in the next four years? What is the power of a state Equal Rights Amendment for when it comes to abortion rights?

Frietsche: It's a really powerful tool that we can use to [go after unreasonable restrictions](#)—restrictions not just on abortion, but contraception and all kinds of reproductive healthcare.

I believe there is an application of the gender equality principles in the ERA in the LGBTQ space as well, particularly because our court was so careful to make clear that physical bodily anatomical differences between people cannot form the basis of an exception from the ERA. That is really all we need to set our

agenda for the next ten years at least, and I'm really looking forward to the chance to develop that case law.

Rios: On a national level, how do you believe that an Equal Rights Amendment would have fundamentally changed the conversation about the fight for reproductive freedom?

Frietsche: I never would've thought I'd be talking like this in 2025, but our federal Constitution does not protect pregnant people. It doesn't protect us.

An old constitutional case called *Geduldig vs Aiello* held that categories that disadvantage pregnant women are not a form of sex discrimination because they are, as they reasoned, they're not discriminating against women and men, they're discriminating between pregnant people and non-pregnant people.

Now, everybody who hears that shakes their head in disbelief. In fact, Congress came back and rewrote Title VII to include a Pregnancy Discrimination Act so that the statutes protect pregnant women, but that old-fashioned constitutional mistake about the Equal Protection Provision of our U.S. Constitution, that's still out there. The Roberts Court has been busy in cases, [including the *Dobbs* case](#), revitalizing it, repeating that that is the law, that pregnancy discrimination is not sex discrimination.

We're not protected from that under our Constitution. If we had an ERA that would no longer be the case.

We need that not just to protect us from abortion restrictions, from really seriously threatened restrictions on birth control and on IVF and miscarriage management. We need it for help with pregnancy discrimination.

“What we need is a unitary movement following the precepts of the reproductive justice

movement...where we really are working in a unified way towards a more humane society, and one that respects and provides a dignified life for all of us.

- Susan Frietsche

Rios: Are there any other state laws that you see as models, in states where there might not be an ERA in the Constitution yet? What are some key provisions you would say are important at the state level right now?

Frietsche: If there is a silver lining to the political moment that we are currently in, it is that it is generating all of this creative energy around state and local initiatives. We haven't been doing this before.

This is the beginning of the flowering of state and local power to protect reproductive and sexual health and rights, and now somewhere out there someone is saying to themselves, you're kidding yourself because one act of Congress can shut down all of your abortion protective measures at the state and local level. And there is truth to that, the federal government absolutely is supreme over the states and localities, but they haven't done it yet, and they might not ever get around to doing it.

In the meantime, we are going to be pushing forward local initiatives and state initiatives like buffer zone laws, which exist in two locations in Pennsylvania and are somewhat effective.

They are helpful in maintaining free access to clinic entrances. We know the Department of Justice is no longer enforcing the federal Freedom of Access to Clinic Entrances Act except perhaps in case of murder of a doctor or a patient, but we can have that same, similar, protection at the state level.

States are looking into adopting state level FACE acts to protect access to clinics and doctors and shield laws. There's funding statutes that direct state money to family planning providers. That will become increasingly important as federal dollars are withdrawn.

There's all kinds of different things that can happen at the state and local level, and that I think will happen at the state and local level because the reality is, people support reproductive healthcare. That's a very popular policy. I think we are going to see a flurry of state and local legislation and policy initiatives to fill the gap that is being created by a hostile federal government.

There are absolutely avenues that are very hopeful and promising. It pays to go local.

Rios: This podcast is looking back on the past 50-plus years of feminist journalism and activism. What do you hope or believe that the next 50 years of feminism can and will accomplish, especially when it comes to abortion and reproductive freedom?

Frietsche: I hope we finally got that what we need is a unitary movement following the precepts of the reproductive justice movement, where we take on not only abortion rights, but rights for LGBTQ people, racial justice, disability justice—where we really are working in a unified way towards a more humane society, and one that respects and provides a dignified life for all of us.

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The Feminist Fight

Looking Back, Moving Forward

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Thanks to [Emersen Panigrahi](#) for their editorial assistance in bringing this Q&A to life.

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ABOUT CARMEN RIOS

Carmen Rios is a feminist superstar. She's a consulting editor and the former managing digital editor at *Ms.* and the host of *Looking Back, Moving Forward*, a five-part series from *Ms. Studios*. Carmen's writing on queerness, gender, race and class has been published

by outlets including *BuzzFeed*, *Bitch*, *Bust*, *CityLab*, *DAME*, *Feminist Formations*, *GirlBoss*, *MEL*, *Mic*, the National Women's History Museum, *SIGNS* and the Women's Media Center, and she was a co-founder of Webby-nominated *Argot Magazine*.

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