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ABSTRACT

“SUBSTANTIALLY LIMITED:”
THE REPRODUCTIVE RIGHTS OF WOMEN LIVING WITH HIV/AIDS

Women living with HIV/AIDS are frequently marginalized because of gender, health status, and, often, socioeconomic class. This paper explores the tension between the law and reproductive rights of women living with HIV/AIDS by analyzing both legal precedents and the evolving public health understanding of HIV/AIDS and reproduction. Of pivotal importance is the Supreme Court’s decision in Bragdon v. Abbott (1998), which, while providing protection for people with HIV/AIDS under the Americans with Disabilities Act of 1990 (the ADA), inadvertently served to perpetuate a damaging stigma against women with HIV/AIDS who choose to reproduce.

This article explores the societal and legal consequences of Bragdon and examines the way in which the law is out of step with medical advancements regarding HIV/AIDS treatment and mother-to-child transmission. The article also considers obstacles women with HIV/AIDS face in medical contexts and their impact on the choice to reproduce, while proposing measures to ameliorate these problems. Finally, the article considers the potential implications of the ADA Amendments Act of 2008 (the ADAAA) and how it may influence courts’ future interpretations of Bragdon. It also discusses why Congress, when passing the ADAAA, should have explicitly addressed Bragdon to combat the stigma surrounding HIV/AIDS and reproduction.