

## Overview: Abortion

### Source Citation (MLA 8<sup>th</sup> Edition)

"Abortion." *Opposing Viewpoints Online Collection*, Gale, 2018, www.gale.com.

An abortion is a medical or surgical procedure that deliberately ends a pregnancy before an embryo or fetus is born. Opponents of abortion typically object to the practice for religious or ethical reasons, contending that the procedure constitutes the cruel termination of what they consider to be a viable human life. Those who support a woman's right to choose an abortion argue that access to safe, legal abortions is a human right. In *Roe v. Wade* (1973), the US Supreme Court ruled that the Constitution protects a woman's right to an abortion through the end of the first trimester, or the twelfth week of pregnancy. After twelve weeks, a woman's access to abortion may be restricted based on the discretion of the states, as well as the level of risk that the pregnancy poses to the woman's health.

The issue of abortion remains highly controversial, and state legislatures have enacted laws to restrict and regulate access to the procedure. Several of these laws have been challenged in federal courts, with some laws, such as the denial of state funds for the procedure, being upheld. Iowa adopted one of the country's most restrictive abortion laws in May 2018 when Governor Kim Reynolds approved a bill prohibiting doctors from performing an abortion if a fetus has a detectable heartbeat, which can be as early as six weeks. Other laws, such as those requiring spousal consent for an abortion, have been struck down. Politicians, religious leaders, health care providers, and activists each contribute their own perspective to the ongoing debate.

Opponents of abortion generally refer to themselves as *pro-life*, while advocates for reproductive rights typically identify as *pro-choice*. Differences of opinion persist within both movements. Some pro-life activists may condone abortions in cases of rape or incest, while others take an uncompromising stance, believing that all abortion is murder. Within the pro-choice movement, some activists contend that no restrictions should be placed on abortions, while many who identify as pro-choice support laws that require a waiting period before the procedure can be performed or laws requiring minors to obtain permission from their parents.

### Surgical and Medical Abortions

The most common types of abortion performed are surgical and take place within the first trimester of pregnancy. The most common procedure performed is suction abortion, also referred to as vacuum aspiration, which involves removing tissue from the uterus through a thin tube. The procedure is less invasive than later surgeries that require labor to be induced. Health care providers generally consider first-trimester surgical abortions performed by trained medical professionals to be among the safest and simplest forms of surgery. Studies by the Centers for Disease Control and Prevention

(CDC), the Institute of Medicine, and reproductive health care provider Planned Parenthood have established that abortions performed during the first trimester carry significantly fewer risks to the mother's health than giving birth at the end of a typical pregnancy.

Medical abortions do not require surgery and are considered safe and effective until the ninth week of pregnancy. The most commonly used drugs for medical abortions in the United States are mifepristone and misoprostol taken together. In such a case, a patient is first directed to take mifepristone, also referred to as RU-486 or the "abortion pill," which is prescribed by a health care provider. This drug blocks the body's natural production of progesterone, an essential pregnancy hormone. The patient then takes the second pill, misoprostol, two days later. This drug causes the uterus to contract and expel the embryo. Medical abortions are slightly less effective than surgical abortions but carry a smaller risk of infection. Health care professionals caution that medical abortions should not be confused with emergency contraception, a type of birth control pill used after unprotected sexual intercourse that serves to prevent, not terminate, pregnancy.

In 2015 Arkansas and Arizona passed legislation requiring doctors to inform patients that medical abortions could be interrupted or "reversed" after taking the mifepristone pill by taking a dose of progesterone, the chemical that mifepristone stops the body from naturally producing. In 2016 Arizona governor Doug Ducey repealed his state's law, which had never gone into effect due to a lawsuit filed jointly by the American Civil Liberties Union, Desert Star Family Planning, the Center for Reproductive Rights, and Planned Parenthood. The courts dismissed the case within months of Ducey's repeal measure because the state was unable to produce scientific evidence supporting the claim that medical abortions are reversible. Similar legislation has been passed in Idaho, South Dakota, and Utah, despite many health care professionals calling such claims irresponsible and insisting that no medical evidence suggests the process can be reversed. However, Dr. George Delgado, a family physician who had promoted the idea in 2012 with a case series of seven patients, published a paper with a larger case series in April 2018 with six co-authors that suggested the method could successfully suspend the effects of mifepristone in approximately 48 percent of medical abortions. Delgado's paper was met with skepticism by health care professionals and reproductive rights activists.

## **US Legislative History**

Abortions were commonly performed in the United States at the time of its founding and were not restricted by law until Connecticut passed the first anti-abortion law in 1821. Abortion law was left to the discretion of state legislatures until the *Roe v. Wade* ruling. By 1967, forty-nine states and the District of Columbia had classified abortion as a felony crime in most cases. That same year, however, Colorado passed a law that allowed women to seek voluntary abortions. Several states followed Colorado in liberalizing their abortion laws. By 1973, abortion laws had been repealed in four states and loosened in fourteen. In states where abortions were prohibited by law, women who

wished to terminate their pregnancies sought out illegal abortions that were provided by health care workers who risked jeopardizing their careers or were performed by individuals without the proper skills or tools to perform the procedure safely.

In 1973, the US Supreme Court ruled in *Roe v. Wade* that restrictive abortion laws were unconstitutional and violated a woman's right to privacy. The justices who supported the decision argued that while the Constitution made no specific reference to a right to privacy, the Due Process Clause of the Fourteenth Amendment guaranteed such a right. The Court's decision determined that an unborn fetus is not a person in the legal sense. However, the Court asserted in its decision that the government "has legitimate interests in protecting both the pregnant woman's health and the potentiality of human life, each of which interests grows and reaches a 'compelling' point at various stages of the woman's approach to term." The ruling established that the decision to terminate a pregnancy during the first trimester was the sole decision of the woman and her physician. The decision also permitted state governments to introduce regulations for the second trimester and to ban abortion after the fetus has reached viability except in cases where the mother's health is endangered. *Viability* refers to a fetus's ability to survive outside of the womb. The point at which viability is achieved during a pregnancy remains a topic of debate. The ambiguity of the term contributes to confusion over the constitutionality of state abortion restrictions. Similarly, all state legislatures do not share the same definitions for conditions that qualify a pregnancy as endangering the health of the mother.

In *Doe v. Bolton*, a companion case to *Roe v. Wade* decided on the same day, the Supreme Court reaffirmed its decision in *Roe v. Wade* by prohibiting laws that require admission to a hospital, approval by a hospital abortion committee, a second and third medical opinion, or legal residence in a state before an abortion can be performed. The decision also extended the definition of what posed a health threat to the mother when performing a post-viability abortion by allowing a health care provider to consider such factors as the woman's age and emotional and psychological health. The decisions of these two cases contributed to a notable decrease in mortality rates among women who were pregnant.

The *Roe v. Wade* decision provided pro-life activists with a clear objective for building a political movement. Activists founded the National Right to Life Committee, the country's oldest pro-life organization, in 1968 in response to states liberalizing their abortion laws. Americans United for Life, founded in 1971, created a legal defense in response to the Supreme Court's ruling. Approximately twenty thousand activists marched together in Washington, DC, to protest the one-year anniversary of the Supreme Court's decision in the March for Life, the first in what has become an annual tradition for pro-life activists. Critics of the court's decision assert that unborn children are legally considered persons in other situations. Unborn children have the right to inherit property, for instance. Likewise, if an unborn child is wrongfully killed, the person at fault can be charged with manslaughter in some states. Critics argue that these inconsistencies reveal the decision's lack of legal foundation.

While *Roe v. Wade* acts as a national standard for abortion law in the United States, the Supreme Court has heard several cases that challenge its ruling. The outcomes of some cases have brought into question the original ruling while further expanding abortion rights in others. In the 1976 case *Planned Parenthood v. Danforth*, the Supreme Court ruled against several restrictions imposed by Missouri's abortion laws, thus expanding access to abortion. One year later, however, the court ruled in *Maher v. Roe* that state governments could choose to deny public funds for an abortion, granting the government additional control over reproductive health care. The *Maher v. Roe* decision took advantage of the Hyde Amendment, a piece of legislation passed by Congress in 1976 that excluded abortion from the list of medical services provided and covered through Medicaid, the federal and state government program that subsidizes medical costs for patients with limited means.

In the 1990s, many state legislatures introduced laws that placed additional regulations on abortion providers that pro-choice activists argued would result in restricted access to abortions. Some of these laws included provisions that required the examination rooms in which the procedure would be performed to be a certain size and width. Other laws insisted abortion providers and facilities be affiliated with a hospital or that abortions be performed within a certain distance from a hospital. Pro-choice groups refer to these laws as Targeted Regulation for Abortion Providers (TRAP) laws. Opponents of TRAP laws argue that they place undue burdens on patients and health care providers in violation of the Supreme Court's rulings. In 2016, the Supreme Court reviewed a bill from Texas that imposed regulations on abortion providers in *Whole Woman's Health v. Hellerstedt*. The court ruled that the provisions required by the Texas bill did not produce enough medical benefits to justify the imposition placed on women seeking abortions.

The allocation of government funds continues to be a focus of the abortion debate. Title X of the Public Health Service Act of 1970 provides grants for family planning programs. In March 2017, the Senate narrowly voted to repeal a restriction that prevented states from denying Title X funds to organizations that perform abortions. The regulation had been issued by the Obama administration shortly before the president left office. The Senate's decision blocks over \$200 million from going to Planned Parenthood and other health care providers that offer abortions. Critics noted that such organizations use this money to provide health care services other than abortions, as the Hyde Amendment already prohibits the use of federal funds for abortions except under special circumstances. President Donald Trump signed the bill into law on April 13, 2017.

In March 2018 the Supreme Court heard a case regarding crisis pregnancy centers (CPCs), which are nonprofit organizations that seek to deter women from terminating unwanted pregnancies. Reproductive rights advocates contend that CPCs often mislead women seeking abortions by engaging in deceitful advertising practices, purposefully providing inaccurate information to visitors, treating women seeking abortions with hostility, and lying to visitors to keep them from leaving the facility. In 2015 California

passed the Reproductive Freedom, Accountability, Comprehensive Care, and Transparency (Reproductive FACT) Act, which requires CPCs to inform their clients that California offers public programs that provide qualifying women with free or subsidized reproductive health care services, including family planning, prenatal care, and abortions. Facilities must also list a telephone number that women can call to determine their eligibility. Additionally, the law requires facilities to provide evidence of their medical license or state clearly that the facility and its staff are unlicensed. The law stipulates that this information needs to be clearly displayed on location and in all print and digital advertising.

The National Institute of Family and Life Advocates (NIFLA), a pro-life law firm that represents over 1,400 licensed and unlicensed CPCs, filed a lawsuit against the California Department of Justice, contending that the new law restricted free speech. Religious organizations, health care providers, public policy research institutes, lawmakers, and government organizations submitted amicus briefs to the court, including briefs submitted by coalitions of state government, one in support of the petitioners and one in support of the respondents. The outcome of the case is expected to affect previous Supreme Court rulings regarding free speech and states' rights.

Pro-life and pro-choice groups have each experienced small victories in the legal battles to determine reproductive rights since 1973, but research indicates that public opinion has come to increasingly accept the *Roe v. Wade* decision. A 2017 survey conducted by Pew Research Center found that 57 percent of Americans believed abortion should be legal in most or all cases. Even so, pro-life groups have been vocal and at times aggressive in their opposition to abortion.

## **Social Concerns**

Many supporters of abortion rights claim that restrictions on abortions have a negative impact on the poor, especially in less developed nations. Though estimates vary widely, the World Health Organization (WHO) estimates that complications from unsafe abortions result in the deaths of tens of thousands of women every year. Despite lacking exact figures, WHO and other researchers have determined that the annual number of women dying from these complications has steadily declined since the 1990s. The international reproductive rights nonprofit organization Ipas attributes the decline to the liberalization of abortion laws as well as expanded access to safe abortions and effective contraception. However, Ipas warns that restrictive abortion policies in South Central Asia and Sub-Saharan Africa continue to contribute significantly to the number of global deaths from unsafe abortions.

Advocates for reproductive rights contend that restrictions on abortion can make them cost-prohibitive for women with limited resources. For example, restrictions on the use of government funds to cover the cost of an abortion deny women equal access to the procedure. Additionally, state laws that impose certain restrictions may compel a woman to seek an abortion in another state. Traveling to another state places a

financial burden on the woman that may be beyond her resources.

Most governments around the world regulate the practice of abortion through laws that say whether, when, why, and how abortions can occur. Abortion is banned under all circumstances in the Dominican Republic, El Salvador, Nicaragua, the Philippines, Vatican City, and Malta. Other countries, such as developing nations in Latin America and the Caribbean, have restrictive abortion laws that only allow abortions when the mother's life is in danger. In contrast, several industrialized nations, such as Australia, Japan, and Sweden, permit voluntary abortions until the end of the first trimester while imposing certain restrictions during the second and third trimester.

## **Responses and Activism**

The pro-life movement has given rise to a network of fervent activists, including those who hold public demonstrations outside of health care facilities that provide abortions. Protesters at abortion clinics often brandish signs with images of fetuses intended to disturb witnesses and shout condemnations and threats of violence toward doctors and patients entering these buildings. In response to these incidents, Congress passed the Freedom of Access to Clinic Entrances (FACE) Act in 1994, which made blocking the entrances of places providing abortion counseling or services a federal offense punishable by fines and imprisonment.

Some anti-abortion activist groups adopted extremist tactics to promote their cause. Members of the militant pro-life organization Operation Rescue have been involved in incidents of domestic terrorism, including the bombing of abortion clinics and the aggressive harassment of health care workers who provide abortions. In 2009, Scott Roeder, an associate of Operation Rescue, murdered prominent abortion provider George Tiller at his church in Kansas.

In 2015, the Center for Medical Progress, a pro-life organization, captured national attention when the group released videos that activists had secretly recorded of Planned Parenthood employees. The videos featured employees discussing fetal tissue sales, sex-selective abortions, and abortions for underage prostitutes. The videos spurred condemnation from reproductive rights activists as being edited in a manipulative and misleading manner, while anti-abortion activists lauded the videos as citizen journalism. However, in March 2017, the two anti-abortion activists responsible for recording the undercover videos were charged with fifteen felony counts of invasion of privacy for videos filmed in California.

Threats to reproductive rights, in turn, have mobilized pro-choice groups to take defensive action. After conservative Republicans, who are predominantly pro-life, blocked Merrick Garland, President Obama's Supreme Court choice during the last year of his term, and then secured majorities in both houses of Congress and won the presidency in 2016, many pro-choice organizations became concerned that a Republican-majority government would impose further restrictions on abortion access

and nominate a pro-life justice to the Supreme Court. On January 31, 2017, President Trump nominated Neil M. Gorsuch to the Supreme Court. Although Gorsuch had not ruled on any abortion cases, Trump's selection was endorsed by pro-life groups based on his opposition to assisted suicide and stance on related issues. In a contentious confirmation process, Senate Democrats filibustered Gorsuch's nomination until Senate Republicans, presiding in the majority, voted to change the Senate rules, allowing a simple majority vote for Gorsuch's confirmation—a tactic informally known as “the nuclear option.” Gorsuch was confirmed on April 7 and sworn in to office two days later.

The election of President Trump, combined with the Republicans securing majorities in both houses of Congress, has been credited for inspiring state legislatures to enact or propose more stringent abortion restrictions in Indiana, Kentucky, Ohio, and Mississippi. Civil liberties and women's rights organizations have launched legal challenges to the new laws. In April 2018, for example, Jackson Women's Health Organization, the only facility providing legal abortions in the state of Mississippi, filed a lawsuit against the state, contending that a new law banning abortions at fifteen weeks violates the precedent established by the Supreme Court that women have the right to terminate a pregnancy before the fetus reaches viability.

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