

CHAPTER 5: ISSUES

Abortion

BACKGROUND

According to the federal Centers for Disease Control and Prevention, 1.2 million abortions were performed in 1995; this is down 4.5 percent from 1994 and 15 percent from the peak of 1.4 million in 1990. In 1992, estimates show that 89 percent of abortions took place during the first 12 weeks of pregnancy (the first trimester), and 99 percent occurred within the first 20 (the estimates are based on information from Alan Guttmacher Institute abortion-provider surveys, abortion surveillance reports by the federal Centers for Disease Control, and unpublished data for 14 states compiled by the National Center for Health Statistics).

Michigan Data

The latest data available from the Michigan Department of Community Health (MDCH) show that in 1996, 30,208 abortions were performed in Michigan, a decline of 3 percent from the previous year, 17 percent from 1990, and 34 percent from 1980. (Data from the state may not reflect the true prevalence of abortion because while reporting is required, abortion providers may not report all the procedures they perform. The Guttmacher numbers are higher, which may be due to the fact that it surveys abortion providers rather than relying on written provider reports.)

The reasons for the decline in abortions are intensely debated by pro-life and pro-choice advocates. The following are most frequently offered; the decrease probably is attributable to a combination rather than a single factor:

- Diminished access to abortion because of the ban on paying for abortions with Medicaid funds
- Parental and informed-consent laws
- Decrease in the number of abortion providers
- Wider and more effective contraception use
- Growth in the number of adolescents abstaining from sex
- Increased teaching of abstinence and/or sex education in schools
- Changing age distribution of females in their reproductive years

GLOSSARY

Abortion

In public policy debate, abortion has come to mean a pregnancy's termination by deliberately expelling or removing a fetus from the uterus.

Viability

The point at which the fetus/unborn child can live a sustained life outside the mother's uterus.

ABORTION

Of the abortions reported in Michigan in 1996,

- 84 percent occurred during the first 12 weeks of pregnancy,
- 99 percent occurred within the first 20 weeks of pregnancy,
- females aged under 20 accounted for 21 percent (down from 31 percent in 1980),
- women aged 20–24 accounted for 32 percent,
- women aged 25–29 accounted for 23 percent,
- women aged 30 and older accounted for 24 percent,
- unmarried females accounted for 83 percent, and
- of the females who had abortions that year, 48 percent had previously had one.

There currently are approximately 70 clinics, physician's offices, and other facilities, located in 22 counties, that provide abortions in Michigan. The precise number of legal abortion providers is uncertain, as some may not report that they perform the procedure.

Since December 1988 Michigan has not paid for abortions through the Medicaid program, except to save a woman's life. (In 1987 about 18,000 Medicaid-funded abortions were performed.) In 1994 the federal government added rape and incest to the exceptions a state must make. It is very difficult to determine the Michigan ban's effect on abortions and birth rates; although abortion rates dropped and birth rates rose immediately following the ban, these changes vary widely by geography and have leveled out over time.

Legal History

In 1973 the U.S. Supreme Court, in *Roe v. Wade*, ruled that the constitutional right to privacy extends to a woman's decision, in consultation with her physician, to terminate her pregnancy. The same ruling says that states may prohibit abortion in the third trimester unless a woman's life or health is endangered ("health" has not been defined precisely). In 1989, in *Webster v. Reproductive Health Services*, the

Court reopened the door to state regulation of pre-third-trimester abortion by upholding Missouri's 1986 law (1) declaring that life begins at conception and (2) prohibiting public facilities from being used for abortions not necessary to save a woman's life. The Court allowed the declaration that life begins at conception because it believed there was insufficient evidence that the declaration would restrict protected activities such as abortion.

Following *Webster*, many state legislatures imposed new restrictions on abortion. In fact, while debate continues as to whether abortion should be permitted at all or only in very limited circumstances, most recent judicial decisions and legislative activity have focused on restrictions to abortion (or access to abortion providers) that fall short of an outright ban.

DISCUSSION

Few issues engender more controversy than abortion. The main and opposing camps on the issue are "pro-life," which includes people who oppose abortion in all (or almost all) circumstances, and "pro-choice," which includes people who believe a woman has the right to choose whether she will have an abortion in all (or almost all) circumstances. These camps disagree on most aspects of the issue, including how they refer to themselves and the others.

- Pro-life advocates often call pro-choice advocates "pro-abortion." Pro-choice supporters argue that they do not prefer abortion to childbirth or adoption, but they do favor a woman's right to choose for herself, which is why they call themselves pro-choice.
- On the other hand, pro-choice supporters often call pro-life forces "anti-abortion." This reflects the pro-choice belief that life does not begin at conception. Pro-life advocates counter that it does, and therefore "pro-life" is more accurate than "anti-abortion." (In this piece, we use "pro-choice" and "pro-life.")

To cite just one more example of the many disagreements between the two camps, pro-choice advocates

call a “fetus” that which pro-life advocates call an “unborn child” or “baby.”

Many see abortion as a black-and-white issue—that is, one either favors a woman’s right to choose to terminate her pregnancy, or one does not—but the issue’s complexity allows for shades of gray. Some believe that abortion should not be allowed under any circumstances, while others would permit it to save the mother’s life or in cases when the pregnant woman is a rape or incest victim. In addition, some believe that abortion should not be permitted after viability (that is, the point at which the fetus/unborn child can live a sustained life outside the mother’s uterus); pro-choice advocates view this as restricting a woman’s legal right to abortion; pro-life advocates view it as saving lives. The debate over *viability* is complicated because advances in medical science may well continue to reduce the number of weeks of pregnancy before viability is achieved.

Related to the viability debate is the recent battle over “partial birth” abortions. Again, the nomenclature itself is controversial. Pro-life supporters define the procedure as “partial birth” because the fetus/unborn child is partially delivered, usually feet-first, through the vagina before the abortion is performed. Such abortions usually are performed after 20 weeks’ gestation, and they contend that such abortions are particularly objectionable because the fetus/unborn child is viable, adding that such abortions rarely are needed to save the mother’s life or even preserve her health.

Pro-choice supporters respond by defining this procedure as “dilation and extraction” abortion, arguing that “partial birth” is a political construct and misnomer with no equivalent in real-world medical practice; that is, the fetus is not partially born. They further contend that these abortions rarely are performed, and when they are, it is only to save a woman’s life when no other method will suffice.

A 1996 Michigan law, Public Act 273, bans “partial birth” abortions, allowing an exception when the mother’s life is in danger. The law, which subsequently

was declared unconstitutional by U.S. District Court, defines the procedure broadly and includes a vaginally delivered “living fetus,” which is defined vaguely and may mean from the moment of conception. The law does not mention viability or weeks of gestation. Pro-choice advocates contend that such a vague definition could effectively prohibit most abortions.

In 1997 Congress passed a bill banning “partial birth” abortions, which subsequently was vetoed. The House overrode the veto, but the Senate has not yet voted on the president’s action. In 1998 a new “partial-birth” abortion bill was introduced in the Michigan Legislature. The bill attempts to address the vagueness in the Michigan law that was the ground for the U.S. District Court’s declaration of unconstitutionality. At this writing, the new bill is in committee.

The Michigan Legislature has passed two other major laws in the 1990s that restrict access to abortion. Since 1993 parental consent to abortion for minors (aged 17 and younger) has been required; the law does exempt a minor from the requirement if she obtains a waiver from a judge. Pro-life supporters argue that the law restores parental and familial rights. They argue that many other less momentous procedures (e.g., ear piercing) require parental consent. Pro-choice supporters believe that it violates a female’s right to decide for herself about childbearing options; they further contend that the judicial waiver may be an undue burden for females who may not be able to prove (or dare not try) that they have been a victim of abuse or incest in their own home.

Also in 1993 a Michigan law—temporarily enjoined since 1994 because two lawsuits on the issue have not been resolved—was enacted requiring all women seeking abortions (1) to be given state-prepared information about the procedure, (2) wait 24 hours before undergoing the procedure, and (3) sign a state-prepared informed-consent form immediately prior to the abortion. The information includes depictions of the fetus at the stage corresponding to the woman’s pregnancy, a description of the abortion procedure, information on the risks and complications of abor-

tion and live birth, information on pregnancy-related services, and a prenatal care and parenting information pamphlet. Pro-choice advocates claim that informed-consent laws are unnecessary at best and, at worst, prevent women from exercising their right to make private decisions about reproductive choices. They argue that evidence demonstrates that women already carefully consider their options before choosing abortion, adding that established medical standards ensure that women are given accurate and unbiased information about their health care options. Moreover, they note, clinics routinely refer women who are ambivalent about their decision for additional counseling. Pro-life advocates counter that such legislation only enables women to make informed choices about abortion. They believe that the information on fetal development balances what they consider biased information already offered to women considering abortion.

These two Michigan laws follow from a 1992 U.S. Supreme Court ruling in *Planned Parenthood of Southeastern Pennsylvania v. Casey*. The Court upheld a Pennsylvania law's provisions requiring a woman to wait 24 hours before an abortion, read state-authored materials about abortion and fetal development, and, if a minor, obtain parental consent (or judicial waiver). In reaching its decision, the Court reaffirmed the right of a woman to an abortion under *Roe v. Wade* but revoked the definition of that right as "fundamental." The Court instead offers a new standard of review that allows restrictions on abortion prior to viability if they do not constitute an "undue burden" to the woman. According to the Supreme Court, the Pennsylvania law's provisions are not unduly burdensome merely because they attempt to discourage a woman from obtaining an abortion.

Controversy about abortion extends to federal support for family planning services, which are funded largely through Title X of the Social Security Act. Title X provides subsidized, affordable contraceptives and other reproductive health services (Pap smears, breast exams, HIV testing, and screening and treatment for sexually transmitted diseases) to more than

four million low-income women each year. In 1993 President Clinton rescinded the "gag rules" that prevented clinics from counseling women about abortions. While Title X funds cannot be used for abortions themselves, clinics receiving the funds now must offer "nondirective counseling" on women's options, which include carrying a child to term, adoption, and abortion. In Michigan, pregnancy prevention programs funded by state dollars are precluded from counseling women about abortion. Pro-life proponents argue that the clear purpose of Title X, which Congress enacted into law in 1970, is to provide *pre-pregnancy* services. The title's authorizing language states that funds shall not be used in programs in which abortion is a method of family planning. Pro-choice proponents counter that denying a woman information about the full range of options violates the principle of informed consent and her right to reproductive choice. Arguing that pro-life advocates wish to eliminate or cut funding for Title X, pro-choice advocates add that the program does not fund abortions but rather, by providing contraceptives and pre-pregnancy counseling, prevents unwanted pregnancies and abortions.

Advances in medical research and technology raise new debate about abortion. One example is "morning after" contraceptive pills, which, for 72 hours after unprotected intercourse, can prevent a fertilized egg from becoming implanted on the uterus wall. Some pro-life forces oppose their use on the ground that the drug is a form of abortion. More controversial still are *abortifacients*, drugs that induce abortion weeks into pregnancy. Mifepristone—the generic name for RU-486, which is the French brand name (the drug will have a new brand name if it is approved in the United States)—is available legally in France (since 1988), Great Britain (1991), and Sweden (1992). The Bush administration banned importation of mifepristone, but in 1993 the Clinton administration asked the Food and Drug Administration (FDA) to reconsider the ban. Clinical trials were conducted on the drug's safety and efficacy in the United States, and in 1996 the drug received an "approvable letter" from the FDA and now awaits final approval. In addition to opposing abortion, pro-

life forces contend that using mifepristone leads to such serious complications as prolonged bleeding, severe cramping, nausea, and others. (Two women have had heart attacks while taking the drug, and one has died, events that have prompted the French government to review the drug's use for older women and smokers.) They add that mifepristone's long-term effects are unknown.

In 1995 the *New England Journal of Medicine* released a study finding that combined use of methotrexate (a chemotherapy drug) and misoprostol (an ulcer drug) can induce abortion in early pregnancy with approximately the same effectiveness as mifepristone. Both drugs are legally available in this country and may be prescribed by physicians. In 1996 Planned Parenthood Federation of America began trials with this drug combination at 17 sites across the nation, and the trials continue.

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