

CHAPTER 5: ABOUT THE ISSUES

Abortion

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; also called “induced abortion.”

Viability

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

BACKGROUND

According to the federal Centers for Disease Control and Prevention (CDC), an estimated 1.33 million abortions were performed in the United States in 1997 (latest available national data); this is down from the peak of 1.6 million in 1990. The 1997 national rates were

- 22.2 per 1,000 women aged 15–44, down from 27.4 in 1990; and
- 27.5 per 1,000 woman aged 15–19, down from 40.3 in 1990.

Michigan Data

The latest data available from the Michigan Department of Community Health show that 26,807 abortions were performed in Michigan in 2000, an increase of 2.3 percent from the previous year but a 45.4 percent decrease since 1987, the year with the highest number of reported abortions. The rate is 12.2 per 1,000 for Michigan women aged 15–44. 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 reasons for the abortion decline are intensely debated by pro-life and pro-choice advocates. The following reasons are most frequently cited, but the decrease probably is attributable to a combination of factors rather than a single one:

- Wider and more effective contraception use
- Changing attitudes toward premarital sexual activity
- Diminished access to abortion because of the ban on paying for abortions with Medicaid funds
- Enactment of parental and informed-consent laws
- A decrease in the number of abortion providers
- Increased teaching of abstinence and/or sex education in schools
- Changing age distribution of females in their reproductive years

Of the abortions reported in Michigan in 2000,

- 87 percent occurred during the first 12 weeks of pregnancy;
- 98 percent occurred within the first 20 weeks of pregnancy;
- women aged under 20 accounted for 19 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 25 percent;

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- unmarried women accounted for 84 percent; and
- among those who had an abortion that year, 48 percent had previously had one.

In 2000, physical complications—most frequently, shock—immediately following an abortion were reported in 26 cases, or about one in 1,000 procedures. Information on subsequent complications (within seven days) was collected for the first time in 2000. Any physician providing care to a woman suffering from such a complication must report it to the state. Seven incidents of subsequent complications were reported.

In 2000, 76 percent of reported abortions were performed in a physician's office, 23 percent in a freestanding, outpatient surgical facility, and the remainder in a hospital or satellite clinic.

Since 1988 Michigan has prohibited payment for abortions through the Medicaid program unless the procedure is necessary to save a woman's life. (In 1987 about 18,000 Medicaid-funded abortions had been performed in the state.) The federal government subsequently (in 1994) required states also to pay for abortions desired by Medicaid recipients to terminate a pregnancy resulting from rape or incest. Information on the source of payment for non-Medicaid abortions was collected for the first time in 2000; where source of payment was reported, self-pay was most frequently indicated.

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." But 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.
- Pro-choice supporters often call pro-life supporters "anti-abortion." This reflects the pro-choice belief that life does not begin at conception. But 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 circumstance, 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 about viability is complicated because advances in medical science may continue to reduce the number of weeks of pregnancy before viability is achieved.

"Partial-Birth" or "Dilation and Extraction" Abortion

Related to the viability debate is the ongoing battle over "partial-birth" abortion. 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 pro-life advocates contend that these abortions are particularly objectionable because the fetus/unborn child is viable; they add that such a procedure rarely is 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 permanently enjoined (prohibited from being in effect) by federal court, defines the procedure broadly and refers to a vaginally delivered "living fetus," which is defined vaguely and may mean from the moment of conception.

In 1999 two partial-birth abortion laws were enacted in Michigan, but the U.S. District Court permanently enjoined the first and temporarily enjoined the other.

- P.A. 107 of 1999 added the Infant Protection Act to the Michigan Penal Code. Pro-life supporters say the measure bans partial-birth abortions; pro-choice supporters say it could ban all abortions.
- P.A. 192 of 1999 amended the Michigan Code of Criminal Procedure, imposing a maximum sentence of life imprisonment for performing a procedure on a live infant with intent to cause death.

The State of Michigan is not appealing the decisions to enjoin, which were based on rulings by the U.S. Supreme Court in *Stenberg v. Carhart*, 2000. The Court (1) upheld a lower court decision invalidating Nebraska's ban on "partial-birth" abortion, (2) ruled that the language in the Nebraska law covered a broad range of abortion procedures, thus resulting in an undue burden on a woman's right to make an abortion decision, and (3) ruled that every abortion regulation must provide for an exception when necessary to preserve the mother's life or health.

Access to Abortion

Three major Michigan laws enacted in the last decade relate to a woman's access to abortion; one pertains to parental consent and two to informed consent. The 1992 U.S. Supreme Court ruling in *Planned Parenthood of Southeastern Pennsylvania v. Casey* was a key factor in

the implementation of the first measure and the genesis of the second and third. 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 a judicial waiver. 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 standard of review that allows restrictions on abortion prior to viability if the restrictions do not constitute an undue burden on the woman. The Court held that the Pennsylvania law's provisions are not unduly burdensome merely because they attempt to discourage a woman from obtaining an abortion.

Parental Consent

Michigan P.A. 211 of 1990 requires parental consent to abortion for minors (aged 17 and younger) unless the minor obtains a waiver from a judge. This law has been in effect since 1993.

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 the law 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.

Informed Consent

Public Act 133 of 1993 requires any woman seeking an abortion to (1) 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 abortion and live birth, information on pregnancy-related services, and a prenatal care and parenting information pamphlet. The law was temporarily enjoined and then implemented in 1999.

P. A. 345 of 2000 amends the above law and imposes limits on how a woman may receive the required information; it specifies that she may obtain it only in person, by registered mail, by fax, or from a state government Web site. The effective date of the law was delayed while the state completed court-directed changes in the Web site; the site was posted in March 2002, and the law may take effect on May 1, 2002. On March 4, 2002, the federal

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district court in Detroit struck down the provision in the law that prohibits a physician from obtaining payment for “abortion related” services until the 24-hour waiting period expires.

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 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.

More recent legislation pertaining to access includes language in the budget for community colleges that prohibits the schools from providing insurance to their employees that covers abortion services (P.A. 52 of 2001). There also is a requirement that a physician’s office in which abortions are annually performed on 50 percent or more patients must be licensed to operate as a freestanding, surgical, outpatient facility (P.A. 206 of 1999); pro-choice advocates maintain that the additional money and time needed to obtain licensure will discourage providers from offering abortion services, thus making it harder for women to obtain them.

Family Planning

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.

While Title X funds cannot be used for abortions themselves, clinics receiving the funds must offer “nondirective counseling” on women’s options, which include carrying a child to term, adoption, and abortion. Pro-life proponents argue that the clear purpose of Title X, enacted 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 vio-

lates 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.

In Michigan, pregnancy prevention programs funded by state dollars are precluded from counseling women about abortion. House Bill 4655, under consideration by the legislature at this writing, would give family-planning or reproductive-health services funding priority to entities that do not (1) perform elective abortions, (2) refer women to abortion providers, (3) advocate for the legality or accessibility of elective abortion, or (4) have a written policy that abortion is part of a continuum of family planning or reproductive health services. Pro-choice supporters contend that enacting the measure will preclude Planned Parenthood Affiliates of Michigan from receiving state and federal funding for family-planning and reproductive-health programs and result in an increase in unwanted pregnancies and abortions. Pro-life supporters counter that Planned Parenthood Affiliates of Michigan will lose funds only if another agency is available to provide the services being funded.

Other Matters of Controversy

The “morning after” contraceptive pill, if taken within 72 hours after unprotected intercourse, can prevent a fertilized egg from becoming implanted on the uterus wall. Some pro-life supporters oppose the drug’s use on the ground that it is a form of abortion. Pro-choice supporters see the drug as a means to prevent unwanted pregnancies and an alternative to abortion.

More controversial still are *abortifacients*, drugs that induce abortion weeks into pregnancy. The U.S. Food and Drug Administration (FDA) has approved mifepristone—the generic name for RU-486, the French brand name—for use as an abortifacient for use in pregnancies of 49 days or less duration. Pro-life supporters contend that using mifepristone, in addition to inducing abortion, leads to such complications as prolonged bleeding, severe cramping, and nausea, and its long-term effects are unknown. Pro-choice supporters point out that mifepristone was rigorously tested and thoroughly reviewed before receiving FDA approval, and, while there are some side effects, it offers women a safe and effective non-surgical, private option.

Since FDA approval of mifepristone, bills restricting access to the drug have been introduced in Congress and several state legislatures.

New Reproductive Technology

The rapid advances in reproductive technology and medical research are raising new legal, moral, and ethical questions for policymakers and courts. Emerging issues related to assisted reproductive technologies—including *in vitro* fertilization; donation and storage of sperm, eggs and embryos; posthumous fertilization; and surrogate parenting arrangements—are forcing courts to rule, often in the absence of guiding legislation, on the rights of mothers, fathers, and fetuses.

Another emerging issue fraught with controversy is stem cell research, which involves human embryos and fetal tissue. The research raises hope for development of ways to treat such diseases as diabetes, but it also intensifies debate about the point at which life begins.

See also Genetic Cloning, Testing, and Research.

FOR ADDITIONAL INFORMATION

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