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*Feature Article*  
**The Woes of Roe: The Future of Women's  
 Reproductive Health in 2015**

Victoria Dempsey

The future of women's reproductive rights hangs in a balance. January 2015 marked the beginning of a new Republican controlled Congress and with it a concerted Republican effort to push through legislation aimed at limiting women's access to reproductive health care. While an outright ban on abortion was at one time only wishful thinking for many conservatives, the GOP-lead Congress may be transforming a pipe dream into reality. In the last six months alone, Congress has introduced over ten bills seeking to directly intervene with women's health.<sup>1</sup> Such legislative efforts, however, are only now joining a much broader statewide attack on women's reproductive rights.<sup>2</sup> Since the 2010 elections, over 230 laws have been proposed to either ban or diminish women's access to reproductive health in many Republican-led states—a number that already exceeds the total from the previous decade.<sup>3</sup> While the future of women's reproductive rights appears in jeopardy, democrats and activists are re-committed to preserving women's right to choose.<sup>4</sup>

REPUBLICAN CONGRESSIONAL EFFORT TO MOVE THROUGH  
 ANTI-ABORTION LEGISLATION

Since January 2015 Republicans have sought to enact legislation through Congress that would all but dismantle women's constitutional right to make their own childbearing decisions.<sup>5</sup> Controversy over women's reproductive

<sup>1</sup> *Anti-abortion bills*. <https://www.govtrack.us/congress/bills/subjects/abortion/5897>, (last visited May 31, 2015).

<sup>2</sup> Elizabeth Nash, Rachel Benson Gold, Gwendolyn Rathbun and Yana Vierboom, *Laus Affecting Reproductive Health and Rights: 2014 State Policy Review*, GUTTMACHER CENTER, <http://www.guttmacher.org/statecenter/updates/2014/statetrends12014.html>, (last visited Mar. 22, 2015).

<sup>3</sup> *A Perilous Year for Abortion Rights*, NEW YORK TIMES, Jan. 20, 2015, <http://www.nytimes.com/2015/01/20/opinion/a-perilous-year-for-abortion-rights.html>.

<sup>4</sup> Lauren Barbato, *The Women at War With Congress For Your Right to Have an Abortion Next Year*, BUSTLE, <http://www.bustle.com/articles/57486-the-women-at-war-with-congress-for-your-right-to-have-an-abortion-next-year> (last visited Mar. 22, 2015).

<sup>5</sup> Tierney Sneed, *Fight Over Abortion Shapes Up in Congress*, U.S. NEWS, Jan. 19, 2015, <http://www.usnews.com/news/articles/2015/01/19/fight-over-20-week-abortion-ban-shapes-up-in-congress>.

health first erupted this year when House Republicans proposed a bill that would prohibit abortions after 20 weeks of pregnancy except in cases of rape or incest.<sup>6</sup> The bill's proposed abortion limit runs contrary to the Supreme Court's ruling in *Roe v. Wade*, which held that women have a constitutional right to seek an abortion until the fetus would be viable outside the womb, typically around 24 weeks.<sup>7</sup> On the 42nd anniversary of *Roe v. Wade*, House Republicans planned to vote on the bill, dubbed the Pain Capable Unborn Child Protection Act.<sup>8</sup> Initially, the bill was abandoned after Republican House members expressed concerns that such a bill would make the party appear too extreme and jeopardize their moderate female voter base.<sup>9</sup> However, the bill was later re-introduced after Republicans eliminated a provision that required rape and incest survivors to first file a report with the police in order to qualify for the exemption.<sup>10</sup> The bill passed the House in May and in June Republican Senator, and 2016 presidential candidate, Lindsey Graham introduced the bill to the Senate.<sup>11</sup> Though Graham and Senate Republicans have rallied behind the bill, it is unlikely that it will have enough votes to overcome a Democratic filibuster in the Senate.<sup>12</sup>

Similar to the 20-week ban, the "No Taxpayer Funding for Abortion Act and Abortion Insurance Full Disclosure Act" has also passed the House.<sup>13</sup> As the name suggests, the bill would permanently block all federal taxpayer funding for abortion under federal law.<sup>14</sup> Though no federal taxpayer dollars have been used to fund abortions for almost four decades under the Hyde Amendment, a legislative provision that bars the use of federal Medicaid funding for abortion except in some narrow circumstances, the Hyde Amendment requires

<sup>6</sup> *Id.*

<sup>7</sup> *Roe v. Wade*, 410 U.S. 113 (1973).

<sup>8</sup> Reid Wilson, *State Legislatures Advance 20-Week Abortion Ban Congress Couldn't Pass*, WASHINGTON POST (Jan. 26, 2015), <http://www.washingtonpost.com/blogs/govbeat/wp/2015/01/23/the-20-week-abortion-ban-that-fell-flat-in-congress-is-likely-to-advance-in-state-legislatures>.

<sup>9</sup> *Id.*

<sup>10</sup> AP, *House passes 20-week abortion ban*, CBS NEWS (May 13, 2015), <http://www.cbsnews.com/news/house-passes-20-week-abortion-ban/>.

<sup>11</sup> Tom Howell Jr., *Lindsey Graham files bill to ban abortion after 20 weeks of pregnancy*, WASHINGTON TIMES (June 11, 2015), [http://washingtontimes.com/news/2015/jun/11/lindsey-graham-bill-bans-abortion-after-20-weeks/?utm\\_source=RSS\\_Feed&utm\\_medium=RSS](http://washingtontimes.com/news/2015/jun/11/lindsey-graham-bill-bans-abortion-after-20-weeks/?utm_source=RSS_Feed&utm_medium=RSS).

<sup>12</sup> *Id.*

<sup>13</sup> Jennifer Gerson Uffalussy, *House Passes 'No Taxpayer Funding For Abortion' Act on 42nd Anniversary of Roe v. Wade*, YAHOO HEALTH. Jan. 22, 2015, <https://www.yahoo.com/health/house-passes-no-taxpayer-funding-for-abortion-108843699742.html>.

<sup>14</sup> *Id.*

annual passage and does not apply to ObamaCare.<sup>15</sup> Under the new bill, Congress would no longer be required to renew these pro-life policies every year, thus permanently codifying the Hyde Amendment into federal law.<sup>16</sup> Representative Steve King (R-Iowa) who voted in favor of the bill stated, “This President promised that ‘under our plan, no federal dollars will be used to fund abortions.’ We know now that was a lie, and this bill corrects his broken promise.”<sup>17</sup>

In addition, the bill would also prohibit private insurance companies that provide coverage plans through ObamaCare from offering plans that contain coverage for abortion services, and remove tax benefits for small businesses that purchase plans that include abortion coverage.<sup>18</sup> Furthermore, the bill provides no exception for abortions that are medically necessary to protect the health of the mother.<sup>19</sup> In response to the bill, democratic female lawmakers contend that the act would raise health care costs for women, urge insurance companies to drop abortion coverage from their plans, and unfairly penalize small businesses who chose to provide abortion coverage to employees.<sup>20</sup> Beyond the implications of the bill itself, Representative Louise Slaughter (D-NY) also criticized the legislative process, which was dominated by male Republicans.<sup>21</sup> “This extreme legislation was originally sponsored by a man, originated from a subcommittee composed of 13 men, and was passed out of the Judiciary Committee with the votes of 21 Republican men. This has been the problem for a long time—men in blue suits and red ties determining what women can and should do when it comes to their own health.”<sup>22</sup> The bill now heads to a Republican-controlled Senate for a vote.<sup>23</sup> However, even if the bill were to pass both bodies of Congress, President Obama has vowed to veto the bill.<sup>24</sup>

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<sup>15</sup> Mary E. Harned, *Why We Need The 'No Taxpayer Funding for Abortion Act'*, THE HILL (Mar. 02, 2015), <http://thehill.com/blogs/congress-blog/healthcare/234159-why-we-need-the-no-taxpayer-funding-for-abortion-act>.

<sup>16</sup> *Id.*

<sup>17</sup> Laura Bassett, *House Republicans Pass Sweeping Anti-Abortion Bill*, HUFFINGTON POST (Jan. 28, 2015), [http://www.huffingtonpost.com/2014/01/28/no-taxpayer-funding-for-abortion-act\\_n\\_4681743.html](http://www.huffingtonpost.com/2014/01/28/no-taxpayer-funding-for-abortion-act_n_4681743.html).

<sup>18</sup> *Id.*

<sup>19</sup> Gerson Uffalussy, *supra* note 13.

<sup>20</sup> Bassett, *supra* note 17.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

Similar to the “No Taxpayer Funding for Abortion Act,” the “Title X Abortion Provider Prohibition Act,” introduced in the House in January, would place further restrictions on federal funding for abortions.<sup>25</sup> This pro-life bill forbids the use of federal funds from going to abortion providers, such as Planned Parenthood.<sup>26</sup> Representative Diane Black (R-Tenn.), head sponsor of the bill and regular pro-life leader, says “[t]his legislation would simply clarify the original intent and spirit of the law to ensure Title X federal funded grants will no longer be awarded to ‘health care’ providers that fail to protect life by providing abortions.”<sup>27</sup>

Two additional measures have been introduced in both houses that would undercut women’s access to abortions, the “Abortion Non-Discrimination Act” and the “Pregnant Woman Health and Safety Act.” The “Abortion Non-Discrimination Act” would give health care providers the right to refuse abortion services or information regarding those services to patients without penalty.<sup>28</sup> According to the American Civil Liberties Union (“ACLU”), in effect the Act would authorize a hospital to turn away a patient in need of an emergency abortion, and allow for a medical professional to refuse to provide information about an abortion to women who wish to end a pregnancy resulting from rape.<sup>29</sup> Additionally, the “Pregnant Woman Health and Safety Act” targets abortion providers with burdensome requirements by compelling doctors who perform abortions to have admitting privileges, or the right to admit and provide specific services to patients, at a local hospital.<sup>30</sup> Doctors who provide abortions find it very difficult to obtain admitting privileges and are often denied such privileges for reasons wholly unrelated to their competency as medical professionals.<sup>31</sup> If the provision were to pass, it would significantly

<sup>25</sup> Steve Ertelt, *New Congressional Bill Would De-Fund Planned Parenthood Abortion Business*, LIFE NEWS (Jan. 28, 2015), <http://www.lifenews.com/2015/01/08/new-congressional-bill-would-de-fund-planned-parenthood-abortion-business>.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Oppose Demands for Federal Immunity from Laws on Abortion Access*, ACLU, <https://www.aclu.org/oppose-demands-federal-immunity-laws-abortion-access-abortion-non-discrimination-act> (last visited Mar. 22, 2015).

<sup>29</sup> *Id.*

<sup>30</sup> *Summaries for the Pregnant Women Health and Safety Act*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/113/s139/summary> (last visited Mar. 22, 2015).

<sup>31</sup> *TRAP FAQ and Fact Sheet*, ACLU, [https://www.aclu.org/files/assets/TRAP\\_FAQ\\_Fact\\_Sheet.Pdf](https://www.aclu.org/files/assets/TRAP_FAQ_Fact_Sheet.Pdf) (last visited Mar. 22, 2015).

diminish the pool of doctors available who can provide women with abortions.<sup>32</sup>

#### REPUBLICAN EFFORTS ON THE STATE LEVEL TO MOVE THROUGH ANTI-ABORTION LEGISLATION

Pro-life legislation that has fallen flat with Congress is moving ahead in State legislatures.<sup>33</sup> Since the 2010 election, State legislatures have been pushing to restrict access to abortion at record speed.<sup>34</sup> More than half of U.S. women of reproductive age live in states that are hostile to abortion rights.<sup>35</sup> A total of ten states have already enacted bans on abortions after 20 weeks of pregnancy, and more states are currently considering similar proposals.<sup>36</sup> Additionally, both Louisiana and Oklahoma have passed legislation that requires abortion providers to have admitting privileges at hospitals within 30 miles of the clinic.<sup>37</sup> This brings the total number of states with admitting privileges requirements to seven (LA, OK, MO, TN, TX and UT).<sup>38</sup> Further, some states have also enacted legislation that extends the waiting period between counseling and obtaining an abortion.<sup>39</sup> For instance, both Alabama and Missouri have extended its waiting period from 24 to 48 hours and 24 to 72 hours, respectively.<sup>40</sup> By the end of 2014, a total of four states including South Dakota and Utah have waiting periods that exceed 24 hours.<sup>41</sup>

The constitutionality of many of these state laws, however, is currently under litigation in federal courts—thus creating fertile ground for Supreme Court action in 2015.<sup>42</sup> Last year, the Supreme Court let stand a lower court decision holding an Arizona law that banned abortions after 18 weeks of pregnancy as unconstitutional.<sup>43</sup> More recently, in February 2015 the state of Mississippi filed a petition to the Supreme Court to review the ruling of a lower

<sup>32</sup> *Id.*

<sup>33</sup> Wilson, *supra* note 8.

<sup>34</sup> Nash et al., *supra* note 2.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Tierney Sneed, *What the Battle Over Abortion Will Look Like in 2015*, U.S. NEWS (Dec. 31 2014), <http://www.usnews.com/news/articles/2014/12/31/what-the-battle-over-abortion-will-look-like-in-2015>.

<sup>43</sup> *Id.*

court declaring unconstitutional a Mississippi law requiring admitting privileges for abortion providers.<sup>44</sup> If the law survives the Supreme Court, it would effectively eliminate access to abortion within the state of Mississippi.<sup>45</sup>

The wave of new abortion restrictions on the state level is not the only source of contention for pro-choice advocates. In February 2015, President Obama laid out his 10-year budget plan which included a \$300 million request for Title X.<sup>46</sup> Title X is the only federal program dedicated to providing comprehensive and affordable reproductive health services.<sup>47</sup> While there was hope among pro-choice advocates that President Obama would significantly increase the amount devoted to Title X, this \$300 million figure fell below expectations and represented only a slight increase from last year's budget of \$286.5 million.<sup>48</sup> Additionally, while pro-choice advocates again hoped that President Obama would take a bold stand on reproductive health by repealing the Hyde Amendment, the President failed to do so.<sup>49</sup> Despite the President's more moderate position on reproductive rights in this year's budget, the budget still has very little chance of being passed without a GOP controlled Congress adding abortion funding restrictions to the bill.<sup>50</sup>

#### ILLINOIS' EFFORTS TO PRESERVE WOMEN'S RIGHT TO CHOOSE

Despite aggressive efforts to limit women's access to reproductive health services, pro-choice activists remain optimistic.<sup>51</sup> The ACLU of Illinois has been hard at work advocating for legislation that would expand women's access to reproductive health services.<sup>52</sup> One of the bills, Senate Bill 1564, is an

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<sup>44</sup> Emily Wagster Pettus, *Mississippi Appeals Blocked Abortion Law to U.S. Supreme Court*, SUN HERALD (Feb. 21, 2015), <http://www.sunherald.com/2015/02/21/6083751/mississippi-appeals-blocked-abortion.html>.

<sup>45</sup> *Id.*

<sup>46</sup> Andrea Flynn, *The Obama Budget: Weak on Reproductive Health*, NEXT NEW DEAL (Feb. 9, 2015), <http://www.nextnewdeal.net/obama-budget-weak-reproductive-health>.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Georgeanne M. Usova, *Budgeting Away Women's Reproductive Rights*, ACLU (Feb. 3, 2015), <https://www.aclu.org/blog/reproductive-freedom-womens-rights/budgeting-away-womens-reproductive-rights>.

<sup>51</sup> Barbato, *supra* note 4.

<sup>52</sup> Telephone Interview with Lorie Chaiten, Director of the Reproductive Rights Project for the Roger Baldwin Foundation, American Civil Liberties Union of Illinois (April 23, 2015).

amendment to the Health Care Right of Conscience Act.<sup>53</sup> Currently, the Health Care Right of Conscience Act allows health care providers to refuse to provide not only abortion services, but also information about such services to patients if it conflicts with the provider's religious beliefs.<sup>54</sup> According to Lorie Chaiten, Director of the Reproductive Rights Project with the ACLU of Illinois, under the Health Care Right of Conscience Act Illinois has the most protective conscience law in the country.<sup>55</sup> The proposed amendment, which has already passed the Illinois Senate, still allows for health care providers to exercise an objection, but it must be done in accordance with a protocol that requires providers to refer, transfer, or give patients written information about other providers who they reasonably believe offer such services.<sup>56</sup> Ultimately, Lorie Chaiten states, Senate Bill 1564 is about protecting women's health and ensuring "patients are not left without proper, standard medical care because of a provider's religious beliefs."<sup>57</sup>

In addition, House Bill 4013, which has been brought to the Illinois Senate, would mandate that State employee health insurance and Medicaid plans cover the cost of abortions.<sup>58</sup> "As the law is written," Lorie Chaiten indicates, "women cannot get coverage unless her life is threatened. It [House Bill 4013] removes all discriminatory measures against abortion and would allow women to treat an abortion as they would any other medical decision."<sup>59</sup> Ms. Chaiten goes on to relate that "[t]here's no reason other than the stigma society associates with abortion and the undercurrent of religious opposition that women should not be able to make this choice."<sup>60</sup> More firmly put, "[t]his bill is about equity and fairness and providing all women access to abortion regardless of their source of insurance."<sup>61</sup>

### CONCLUSION

Hope remains for pro-choice advocates. Planned Parenthood announced in February that their organization had grown to eight million supporters.<sup>62</sup>

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Barbato, *supra* note 4.

Moreover, according to Julie Gonen, federal policy director for the Center of Reproductive Rights, a recent report on the 113th Congress indicated a “renewed energy on policies that promise equitable access to health care [and] support women and families.”<sup>63</sup> In February 2015, Senators Patty Murray (D-WA), Barbara Boxer (D-CA), and Barbara Mikulski (D-MD) introduced the “21st Century Women’s Health Act,” which includes provisions that would require private insurance coverage for FDA-approved forms of contraception under the Affordable Care Act.<sup>64</sup> In addition, the bill also contains a provision requiring the Department of Health and Human Services to compile reports aimed at investigating the impact of state laws limiting women’s access to abortion.<sup>65</sup> Senator Patty Murray calls the bill a “fight back against those who miss the Mad Men era” and states that the bill “lays out important ways we can and should move forward on women’s health.”<sup>66</sup> Additional legislation has been introduced that would protect women’s choice, including the Women’s Health Protection Act and the Not My Boss’s Business Act.<sup>67</sup>

While pro-choice advocates no doubt face an uphill battle on the issue of reproductive rights, democratic senators will not go down without a fight. “I do know there are those who are going to say no right off the bat,” Murray said.<sup>68</sup> “That won’t stop me.”<sup>69</sup>

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<sup>63</sup> *Id.*

<sup>64</sup> Reena Flores, *Senate Dems Pledge Health Fight Against “Mad Men Era,” Push for Medicaid to Cover Birth Control*, CBS NEWS (March 6, 2015), <http://www.cbsnews.com/news/senate-dems-pledge-health-fight-against-mad-men-era-push-medicaid/>.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Barbato, *supra* note 4.

<sup>68</sup> Flores, *supra* note 52.

<sup>69</sup> *Id.*