Reproductive Choice

"The economic security of women and families is directly tied to a woman's access to reproductive health care. As the United States Supreme Court has said, 'The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.'[1] The ability to decide when and whether to become a parent due to access to reproductive health care has led to a dramatic increase in both women's participation in the workforce and families' reliance on women's earnings. Yet, accessing reproductive health care can be costly for women, if available at all, because of ever-increasing government-imposed barriers [that] threaten their health and economic well-being. It is imperative to strike down these barriers and ensure every woman has access to safe and affordable reproductive health services – women's economic security could depend on it."

"Access to reproductive health services leads to greater educational and employment opportunities for women, and greater economic security for women and families:

- *The ability of women to plan and space pregnancies through access to birth control is linked to their greater educational and professional opportunities and increased lifetime earnings.*
- *One study concludes that the advent of oral contraceptives contributed to an increase in the number of women employed in non-traditional female occupations and professional occupations, including as doctors and lawyers.*
- *Studies have also linked an increase in women's wages to the availability of birth control.*
- *Access to reproductive health care can also benefit children later in life: a recent study shows that children whose mothers had access to birth control have higher family incomes and college completion rates."*

--National Women's Law Center, "Reproductive Health Is Part of the Economic Health of Women and Their Families," May 2015[2]

Though there were few legal limitations on abortions prior to the Civil War, by 1910, every state had anti-abortion laws, and by 1967, 49 states[3] and the District of Columbia classified abortion as a felony. Limited exceptions were permitted to this general ban, with 42 states allowing abortions only when necessary to save the life of the mother, five others adding an additional exception for the health of the mother, and just three states leaving the determination of whether an abortion was legally permissible up to the courts.[4] Although reliable statistics on the number of illegal abortions occurring during this period are

limited, the best estimate of experts is that between 200,000 and 500,000 illegal abortions were being performed every year.[5]

Roe v. Wade: Starting in 1967, some states began to reduce the legal restrictions on abortions, with (by 1970) Alaska, Hawaii, New York and Washington state repealing criminal penalties for abortions performed in early pregnancy by a licensed physician. But the major change with regard to a woman's right to reproductive choice occurred with the landmark *Roe v. Wade* (and the companion *Doe v. Bolton*) decision by the U.S. Supreme Court in 1973. In its decision, the Court ruled that states may not categorically prohibit abortions by making their performance a crime, nor make abortions unnecessarily difficult to obtain by imposing restrictive procedural guidelines. The Court based its decision on the conclusion that the 14th Amendment's right of personal privacy included a woman's decision about whether or not to carry a pregnancy to term.[6]

A January 2013 National Women's Law Center (NWLC) report on the 40th anniversary of the *Roe* decision elaborated on its findings.

In Roe, the Court held that the constitutional right to privacy includes a woman's right to decide whether to have an abortion. The Court made clear that as a basic right to privacy protected by the Due Process Clause of the Fourteenth Amendment, the woman's right is "fundamental," meaning that governmental attempts to interfere with the right are subject to "strict scrutiny." To withstand strict scrutiny, the government must show that its law or policy is necessary to achieve a compelling interest. The law or policy must also be narrowly tailored to achieve the interest and must be the least restrictive means for doing so. Yet, the Court also concluded that the "right is not unqualified and must be considered against important state interests in regulation." The Court identified those state interests as protecting women's health and protecting the "potentiality" of life. The Court developed a way to balance the woman's right to abortion against these governmental interests: prior to fetal viability, a state could only regulate abortion if necessary to protect a woman's health, such as licensing doctors. After fetal viability, a government could regulate and even ban abortion to further its interest in the potentiality of life, but it must safeguard a woman's life and a woman's health.[7]

The impact of the *Roe* decision on women was enormous, with greater access to legal abortions by nonwhite women, availability of legal abortions closer to home, and termination of pregnancies at an earlier stage (almost a quarter of all abortions performed in 1970 occurred at 13 weeks or later whereas fully 90% of all abortions were performed before 13 weeks just a decade later) among the effects. Most importantly, "the replacement of unsafe, illegal abortions by safer, legal procedures meant that women experienced fewer serious complications. Studies performed at the national, state and local levels revealed that hospitalization of women with complications from illegal abortions decreased gradually after *Roe v. Wade*...As the availability of legally induced abortion increased, mortality due to abortion dropped sharply: the number of abortion-related deaths per

million live births fell from nearly 40 in 1970 to eight in 1976…Today, legal abortion is less likely than an injection of penicillin to cause death."[8]

BUT IN RECENT YEARS, THE GAINS FOR WOMEN EMBODIED IN THE *ROE V. WADE* DECISION HAVE COME UNDER INCREASING ATTACK, AT BOTH THE FEDERAL AND STATE LEVELS.

Subsequent Supreme Court decisions: In the 1992 case of *Planned Parenthood v. Casey,* the Supreme Court reaffirmed the essential points of the *Roe* ruling, stating, "Personal decisions that profoundly affect bodily integrity, identity, and destiny should be largely beyond the reach of government…In *Roe v. Wade*, this Court correctly applied these principles to a woman's right to choose abortion." However, the decision weakened the protections afforded by *Roe* by replacing the "strict scrutiny" standard with an ill-defined "undue burden" threshold, meaning

The government no longer has to meet the high bar of justifying a restriction on abortion by showing a compelling interest for passing the restriction, as well as showing that the restriction is narrowly tailored to meet that interest. Instead, under the undue burden standard, the Court considers whether a restriction places an undue burden, or substantial obstacle, in the path of a woman who seeks to terminate her pregnancy…The decision in Casey led to states passing more restrictions on abortion and lower courts upholding them, including mandatory delays, biased counseling requirements, and restrictions on young women's access to abortion.[9]

The 2007 Supreme Court decision in *Gonzales v. Carhart* upheld the federal Partial-Birth Abortion Ban Act of 2003 (PL 108-105) that prohibits physicians from performing a "partial-birth abortion" except when necessary to save the life of a mother whose life is endangered by a physical disorder, illness or injury, including a life-endangering physical condition arising from the pregnancy itself.[10] The 2013 NWLC report noted that the law was upheld even though it contained no exception to allow the use of the procedure if necessary to protect the health of the woman, as had been required under the *Roe* and *Casey* decisions.

In Gonzales v. Carhart*, the Court held that a woman's decision to follow her physician's advice can be overridden by the government, based on a new principle never advanced or documented by either side in the case: "the bond of love the mother has for her child." The Court determined that abortion has serious harmful effects on women, including severe psychological consequences. Even though the Court admitted that this determination was based on "no reliable data," it decided that criminalizing a medically-approved abortion procedure was an acceptable way for the state to protect women from the "harmful" consequences of their own decisions that it decided to recognize. In other words, the Court deprived women of the right to make the best choice for themselves and their families because it is for their own good [emphasis in the original]. Justice Ginsburg recognized that this reasoning "reflects ancient*

notions about women's place in the family and under the Constitution—ideas that have long since been discredited."[11]

Federal funding of abortion: Under the so-called Hyde Amendment (named after its author, Rep. Henry Hyde, R-IL), which was passed by Congress in 1976 and went into effect in 1977, the use of any federal funds to pay for abortions is prohibited, except in cases of rape, incest, or where the woman's life is in danger. The original amendment applied only to the Medicaid program for low-income individuals, which had covered abortion services after the *Roe* decision, but over the years, it has been extended to cover federal employees and women in the Indian Health Service. (Women in the military are subject to separate, but similar, restrictions.) The Hyde Amendment is not part of permanent law, but has been annually renewed by Congress each year since 1977 as an attachment to appropriations bills.[12] As noted by the NWLC, "The Hyde Amendment was created to stop women from getting abortions. Representative Henry Hyde, the amendment's main proponent, stated very clearly that this was the goal: 'I would certainly like to prevent, if I could legally, *anybody* having an abortion: a rich woman, a middle class woman, or a poor woman. Unfortunately, the only vehicle available is the…Medicaid bill…' States can go beyond the Hyde Amendment, and cover medically necessary abortions for qualified women with their own state funds. However, only 17 states have done so. This means that the vast majority of low-income women in the U.S. who receive coverage of their health care needs through Medicaid are denied coverage of abortion."[13]

Affordable Care Act ("Obamacare") and abortion services: The Patient Protection and Affordable Care Act of 2010 (PL 111-148) essentially reaffirms previous federal policies in restricting federal funding of abortion services (the Hyde Amendment) and allowing states to determine abortion policy otherwise.

- Federal funds may be used to pay for abortion services only when the pregnancy is a result of rape or incest or is a medical threat to the woman's life. States may use state-only funds to pay for "medically necessary" abortions under Medicaid beyond those permitted under federal law, or to pay for abortion coverage in plans offered in a state exchange.
- Federal subsidies (for premiums or cost sharing) are prohibited from being used for abortion coverage beyond those permitted by federal law.
- Abortion coverage is prohibited from being required as part of the federally-established "essential benefits" package.
- States may prohibit coverage for any abortions in their state exchanges, and at least one plan within a state exchange must not cover abortions beyond those permitted by federal law.
- State laws regarding coverage, funding or procedural requirements on abortions (including parental notification/consent laws) are not affected.

- States may prohibit plans in state exchanges from covering any abortions, even if the pregnancy is a result of rape or incest, or a threat to the woman's life.
- Plans participating in state exchanges are prohibited from discriminating against any health care provider because of their unwillingness to provide, pay for, provide coverage of, or refer for abortions.[14]

Affordable Care Act (ACA) and contraceptives: Prior to the ACA, coverage for prescription contraceptives was "widespread but not universal." Most women in the U.S. receive health care coverage through private plans, and a 2010 survey of employers found that 85% of large firms covered prescription contraceptives in their largest health plans, though many of these included cost-sharing requirements that produced wide variations in costs and exemptions. Twenty-eight (28) states currently require insurance plans sold in the state to cover contraceptives, though, again, with a wide variation in costs and exemptions. Most federal health insurance programs (including Medicaid, the Federal Employee Health Benefits Plan and TRICARE for military families) cover contraceptives.[15]

Under the ACA, certain preventive health services were required to be covered in most new health insurance plans without imposing cost sharing (i.e. no co-payments or deductibles). In August 2011 HHS formalized the list of covered services (including all contraceptive services and supplies approved by the Food and Drug Administration[16]) based on recommendations from a committee of experts on women's health convened by the Institute of Medicine. Under a final rule implementing this portion of the ACA (effective August 1, 2012), "the full cost of all prescribed FDA-approved contraceptives and related services must be covered in new private plans, including individual, small group, large group, and self-insured employer plans. This new rule applies to all new plans, except for plans sponsored by certain non-profit religious employers who object to the use of birth control. Existing plans that have "grandfathered" status are not required to provide this coverage regardless of the employers' religious affiliation."[17]

The ACA's coverage of contraceptive services offers significant benefits for women at minimal costs for employers, as outlined in a 2012 report by the Kaiser Family Foundation.

This new provision has significant implications for access to contraception and affordability for millions of women. It is estimated that half of pregnancies in the U.S. are unintended, among the highest rate among developed nations. The vast majority of women in the U.S. have used a contraceptive at some point in their lives to prevent unintended pregnancy, plan future pregnancies, or space childbearing. Cost-sharing requirements, such as co-payments and co-insurance, have been shown to curtail utilization of preventive services…The National Business Group on Health recommends that employers include coverage of contraceptives in their plans, finding that the short-term costs may be modest and will likely be offset by long-term saving in preventing costs associated with pregnancy. An HHS brief on cost implications of prior expansions of contraceptive coverage concluded: "Evidence from well-documented prior

expansions of contraceptive coverage indicates that the cost to issuers of coverage for all FDA-approved contraceptive methods in insurance offered to an employed population is zero."[18]

The 2013 Kaiser Women's Health Survey found that insurance covered the full cost of contraception for 35% of women with private insurance, and part of the cost for another 41% of such women, whereas 13% reported their insurance provided no coverage for birth control.[19]

Two reports released in April 2015 pointed to problems in the implementation of the ACA's contraceptive coverage provisions. A Kaiser Family Foundation analysis of 20 different health insurance carriers in five states (CA, GA, MI, NJ, TX) indicated, "While many insurance carriers are complying with the spirit of [the ACA contraceptive coverage] requirement, the study finds that several carriers require cost sharing, decline coverage, or otherwise limit coverage of certain contraceptive methods, in particular the vaginal ring, the patch and implants."[20] A review by NWLC of contraceptive coverage offered through the ACA health insurance exchanges in 15 states found that "Although most women have this coverage now…some are still paying out-of-pocket costs for birth control." In addition, "this research identified three major trends among insurers that do not comply with the ACA's birth control benefit: Insurance companies are still not providing coverage for all FDA-approved methods of birth control, or impose out-of-pocket costs on items; Insurance companies limit their coverage to generic birth control; and, Insurance companies fail to cover the services associated with birth control without out-of-pocket costs, including counseling or follow-up visits."[21]

In response to the findings in the two 4/15 reports, as well as its own analysis of implementation of the ACA contraceptive coverage provisions, on May 11, 2015 the Obama Administration issued expanded guidelines for private health plans that:

- Clarified that the contraceptive coverage guarantee extends to all 18 distinct contraceptive methods used by women, as identified by the Food and Drug Administration;
- Required insurers to fully cover all related clinical services "needed for provision of the contraceptive method;
- Clarified that the preventive services requirements apply to all plan enrollees, including those enrolled as dependents; and
- Limited the use of so-called reasonable medical management techniques (such as drug formularies and prior authorizations) for cutting costs.[22]

Affordable Care Act (ACA) and contraceptive coverage religious exemptions:
Originally, the exemption from the contraceptive coverage requirement for religious employers who object to the use of birth control was limited to houses of worship (churches, synagogues, mosques, etc.). However, objections that this excluded other

religiously-affiliated institutions (such as faith-based hospitals and universities) led to the Obama Administration's development of a revised regulation (issued on February 10, 2012) that expanded the religious exemption:

- Houses of worship were completely exempted from the contraceptive coverage requirement.
- Other non-profit religiously affiliated employers who hold religious objections to contraceptives were given a one-year delay (until August 2013) during which they would not have to comply with the requirement, and during that time HHS was to develop a rule requiring that health insurance companies that sell plans to those employers offer contraceptive coverage without cost-sharing directly to any employees and their dependents who wish to have it. Thus, the religiously-affiliated employer would not have to spend their funds on contraceptive coverage, but their employees and their dependents would still be able to obtain such coverage if they desire it.[23]

***Hobby Lobby* decision**: On June 30, 2014 the U.S. Supreme Court ruled in the cases of *Burwell v. Hobby Lobby Stores, Inc.* and *Conestoga Wood Specialties v. Burwell* (often collectively referred to as the *Hobby Lobby* decision). By a narrow 5-4 majority, the Court held that applying the Affordable Care Act's requirement of coverage of contraceptives in new health insurance plans to owners of certain closely-held (i.e. family-owned) for-profit businesses was a violation of those companies' rights under the Religious Freedom Restoration Act (RFRA). While eliminating the contraceptive coverage mandate for the businesses in question, the majority opinion indicated that the federal government could provide for contraceptive coverage in these cases by either paying for the coverage itself, or utilizing the accommodation employed for religiously-affiliated non-profits (i.e. requiring the insurance companies to provide the coverage). The majority opinion also sought to emphasize that the decision only applied to such corporations run on religious principles, but in her dissent, Justice Ginsburg indicated that it could open the way to a large number of challenges by corporations over any laws they claim violate their religious liberty.[24]

The National Women's Law Center summarized the impact of the *Hobby Lobby* decision as follows.

The Supreme Court's deeply divided 5-4 decision in Burwell v. Hobby Lobby Stores, Inc. *and* Conestoga Wood Specialties v. Burwell *dealt a blow to women's health and equality. In these two cases, for-profit companies challenged the Affordable Care Act's (ACA) guarantee that women receive insurance coverage of birth control in their employee health plan. Justice Alito's opinion for the majority allowed certain closely-held for-profit corporations to get out of complying with the birth control requirement, leaving the women who work for these companies without a critical health benefit in the health insurance they have earned through their work and paid for through their premiums…The majority held that the birth control coverage benefit*

imposes a "substantial burden" on the companies' religious exercise. Rather than analyzing the facts and the law as to the nature of the burden, the majority held that there was a substantial burden simply because the companies said there was…The dissent finds that the birth control coverage benefit simply means that a company's health plan must include coverage of birth control alongside other preventive services. Any decision to use birth control is "the woman's autonomous choice," in consultation with her health provider, not a decision made by Hobby Lobby or Conestoga Wood. In other words, any connection between the company owners' religious objections and the benefit is too attenuated to be a "substantial" burden on religious exercise…As a result of the Supreme Court's decision, women workers and female dependents of employees at these [two] companies will not have access to no cost-sharing birth control coverage in their employee health plans as guaranteed by the ACA. Thousands of workers at the over 70 other for-profit businesses that have brought similar lawsuits will also likely lose this coverage, as the lower courts resolve those cases consistent with Hobby Lobby.[25]

State laws concerning abortion: Both before and after the *Roe v. Wade* decision, state governments have been responsible for most regulations concerning abortion. In recent years, such laws have tended to limit a woman's right to choose whether to have an abortion. As of June 1, 2015:

- Late-term abortions: 43 states prohibit abortions (typically except when necessary to protect the woman's life or health) after a specified point in the pregnancy (usually defined as the point of fetal viability).
- Medicaid funding: 17 states use their own funds to pay for all or most medically necessary abortions for Medicaid enrollees, whereas 32 states and the District of Columbia prohibit the use of state funds except in cases permitted under federal law (Hyde Amendment): where the woman's life is in danger or the pregnancy is the result of rape or incest. South Dakota (in apparent violation of federal law) limits funding to cases of life endangerment only.
- Coverage by private insurance: 11 states restrict coverage of abortion services in private plans (usually limiting coverage to cases where the woman's life would be endangered if the pregnancy were carried to full term). (As of January 2015, 25 states prohibit insurance coverage of abortion in the state's ACA exchange.[26])
- Provider refusal: 46 states permit individual health care providers to refuse to participate in abortions, and 43 states allow institutions to refuse to perform abortions.
- Waiting periods: 26 states mandate that a woman seeking an abortion must wait a specified period of time (usually 24 hours) between when she receives counseling and the procedure is performed.
- Parental notification and consent: 25 states require one or both parents to consent to an abortion for a minor, and 13 states require that one or both parents be notified prior to the procedure.[27]

- Targeted regulation of abortion providers: "24 states have laws or policies that regulate abortion providers and go beyond what is necessary to ensure patients' safety," such as requiring that these facilities "maintain relationships with hospitals, [which] adds nothing to existing patient protections while granting hospitals effective veto power over whether an abortion provider can exist."[28]

As reported by the National Women's Law Center in January 2015, "state legislators in 2014 continued to enact laws that restrict access to abortion or ban it outright. During the year 15 states adopted 26 new restrictions that limit access to abortion. These state restrictions are a dangerous overreach into women's personal medical decisions." The following are among the new state laws identified in the report.

- Mississippi enacted a ban on all abortions after 20 weeks of pregnancy, with very limited exemptions for medical emergencies and severe fetal anomalies (and no exceptions for cases of rape or incest). Similar laws were previously passed in nine other states.
- Oklahoma became the 14th state to require women to undergo an ultrasound before she can obtain an abortion.
- Georgia passed a law banning insurance coverage of abortion (even in cases of rape or incest) in plans offered in the state's ACA exchange, and Indiana adopted a statute banning coverage of abortion in all private insurance plans.
- Louisiana and Oklahoma enacted laws "requiring abortion providers to obtain medically unnecessary hospital admitting privileges…These laws are meant to drive abortion providers out of business, and are a back door ban on abortions."[29]

Congressional actions: In recent years, the U.S. House of Representatives has approved a number of pieces of legislation that would limit women's reproductive rights, but – to date at least – opposition in the U.S. Senate and by the President has prevented these measures from becoming law.

112th Congress (2011-2012):

A. Planned Parenthood funding: In the House, Rep. Mike Pence (R-IN) offered an amendment to the Continuing Appropriations Resolution for FY 2011 that would prohibit the use of federal funds for Planned Parenthood. As observed by the National Women's Law Center at the time, "Planned Parenthood health centers currently provide preventive services to millions of Americans in need of health care, including the provision of contraceptives, cancer screenings, breast exams, and STI and HIV testing. In fact, over 90% of health care offered by Planned Parenthood health centers is preventive…The Pence Amendment does not in any way prohibit taxpayer funding of abortion, since federally funded health care clinics are already prevented from using federal funds to pay for abortion services."[30] The House approved the Pence Amendment on February 18, 2011 by a

vote of 240-185 (Roll Call #93—Yes: 230 Republicans, 10 Democrats; No: 7 Republicans, 178 Democrats).[31] The measure was killed in the Senate.

B. Expansion of exemption for contraceptive coverage: In the Senate, Sen. Roy Blunt (R-MO) offered an amendment to an unrelated highway funding bill to allow any employer or health insurance company to refuse insurance coverage of any health care service required by the Affordable Care Act (including, but not limited to, contraceptives) based on undefined "religious beliefs or moral convictions." The amendment would vastly expand the ACA's religious exemption for contraceptive coverage.[32] It was narrowly defeated on March 1, 2012, by a vote of 51-48 on a procedural motion to table (or kill it), where a Yes vote was a vote against the Blunt Amendment (Record Vote #24—Yes: 48 Democrats, 1 Republican, 2 Independents; No: 3 Democrats, 45 Republicans).[33]

113th Congress (2013-2014):

A. Expansion of exemption for contraceptive coverage: In the Senate, Sen. Deb Fischer (R-NE) offered an amendment to the FY 2014 Senate budget resolution (S.Con.Res. 8) on 3/22/13. The Fischer Amendment sought to "defend the conscience rights and religious principles of employers and physicians" by protecting their "religious beliefs and moral convictions" with respect to providing, or not providing, coverage of "basic primary and preventive health care" for women in insurance plans. The amendment was defeated by a 44-55 vote (Record Vote #55—Yes: 2 Democrats, 42 Republicans; No: 50 Democrats, 3 Republicans, 2 Independents).[34] In the House, similar language was attached by the House Republican leadership to the FY 2014 Continuing Appropriations resolution that sought to prevent a government shutdown at the start of the fiscal year (October 1, 2013). The House leadership, in support of the Republican caucus, tried to utilize the appropriations measure as a means of de-funding or delaying implementation of the Affordable Care Act. As part of that effort, on September 29, 2013 the House approved, by a vote of 231-192 (Roll Call #498—Yes: 229 Republicans, 2 Democrats; No: 2 Republicans, 190 Democrats)[35] an appropriations resolution that included the so-called "conscience clause" to permit employers and insurers to not provide insurance coverage for certain preventive services for women, including contraceptives, that they object to on religious or moral grounds. This was included as part of overall language to impose a one-year delay in implementation of any ACA provisions not then in effect.[36] The House-passed resolution was rejected by the Senate, and a shutdown of the federal government subsequently occurred from October 1 through October 16, 2013, until it was lifted by a funding agreement passed by both houses that removed any delays in ACA implementation, including in the provision of insurance coverage for contraceptive services.[37]

B. Ban on federal funding of abortion: The "No Taxpayer Funding for Abortion Act" was introduced in the House by Rep. Christopher Smith (R-NJ) on 5/14/13 (H.R. 7, which had 171 co-sponsors) and in the Senate by Sen. Roger Wicker (R-MS) on the same date (S. 946,

which had 27 co-sponsors).[38] These measures would make the Hyde Amendment's ban on federal funding of abortion services permanent, and expand its provisions to prevent federal funds from going to any providers or facilities that offer abortion services. Furthermore, they would extend the ban to include federal tax credits for premium assistance provided under the Affordable Care Act for any health insurance plans that provide abortion coverage. Under current law, the federal subsidies may not be used to purchase such coverage, but the subscriber is permitted to pay for the abortion coverage separately and out of their own pocket. As explained in the non-partisan *National Journal,* "The bill gives insurers a big incentive to drop abortion coverage from their plans, or risk losing the large pool of consumers who receive the law's subsidies. Abortion coverage is historically relatively ubiquitous in health plans, so the effect could be far-reaching."[39] The House approved H.R. 7 on January 28, 2014 by a vote of 227-188 (Roll Call #30—Yes: 221 Republicans, 6 Democrats; No: 1 Republican, 187 Democrats),[40] but no action was taken in the Senate.

C. 20-Week Abortion Ban: The "Pain-Capable Unborn Child Protection Act" would ban all abortions nation-wide on or after the 20th week of pregnancy except "(1) where necessary to save the life of a pregnant woman whose life is endangered by a physical disorder, illness, or injury, excluding psychological or emotional conditions; or (2) where the pregnancy is the result of rape, or the result of incest against a minor, if the rape has been reported at any time prior to the abortion to an appropriate law enforcement agency, or the incest has been reported at any time prior to the abortion to an appropriate law enforcement agency or to a government agency legally authorized to act on reports of child abuse or neglect." The House bill (H.R. 1797, which had 184 co-sponsors) was introduced on 4/26/13 by Rep. Trent Franks (R-AZ) whereas the Senate version (S. 1670, which had 40 co-sponsors) was introduced by Sen. Lindsey Graham (R-SC) on 11/7/13.[41] On 6/18/13, the House approved H.R. 1797 by a margin of 228-196 (Roll Call #251—Yes: 222 Republicans, 6 Democrats; No: 6 Republicans, 190 Democrats),[42] but no was taken in the Senate.

Birth control statistics: In 2011, the U.S. abortion rate declined to 16.9 abortions per 1,000 women aged 15-44, the lowest level since 1973 (when it was 16.3 per 1000) and far below the 1981 peak level (of 29.3 per 1000). A researcher for the Guttmacher Institute indicated, "With abortion rates falling in almost all states, our study did not find evidence that the national decline in abortions during this period [2008-2011] was the result of new state abortion restrictions," observing further that many of those restrictions were enacted or went into effect after the study period. The researcher continued, "Rather, the decline in abortions coincided with a steep national drop in overall pregnancy and birth rates. Contraceptive use improved during this period, as more women and couples were using highly effective long-acting reversible contraceptive methods, such as the IUD. Moreover, the recent recession led many women and couples to want to avoid or delay pregnancy and childbearing."[43]

A July 2014 fact sheet prepared by the Guttmacher Institute highlighted other pertinent facts about abortion in the United States.

- In 2010, 63.1% of all abortions were performed within the first eight weeks of pregnancy, and another 25.7% took place between the ninth and twelfth weeks. Just 1.2% occurred after the twentieth week.
- Half of pregnancies are unintended and 40% of these are terminated by abortion.
- Each year, 1.7% of women aged 15-44 have an abortion.
- Approximately 61% of all abortions are obtained by women who have one or more children.
- Women who have never married and are not cohabiting account for 45% of all abortions.
- Teenagers represent 18% of those obtaining abortions, whereas women in their twenties account for 57%.
- Over four in ten (42%) women having abortions have incomes below the federal poverty level.
- "The reasons women give for having an abortion underscore their understanding of the responsibilities of parenthood and family life. Three-fourths of women cite concern for or responsibility to other individuals; three-fourths say they cannot afford a child; three-fourths say that having a baby would interfere with work, school or the ability to care for dependents; and half say they do not want to be a single parent or are having problems with their husband or partner."[44]

A CDC analysis of abortion in 2011 found that, in the 36 states (plus the District of Columbia) reporting such information, 85.5% of women who obtained abortions were unmarried, increasing from 81.7% in 2002.[45] However, a separate CDC report indicated that the abortion rate among unmarried women had declined from 47.7 abortions per 1000 women in 1990, to 34.9 in 2000, to 28.9 in 2009.[46]

Polling: Public opinion on abortion has been broadly consistent over time, with a larger proportion of respondents thinking abortions should be available in all cases than believing abortions should be completely unavailable, but a majority always favoring a position between those clear cut viewpoints. In most surveys opinion tends to fall on the side of abortions being made legal in most cases, but the precise wording of the question plays a major role in determining where most respondents would draw the line.

(1) This is illustrated most clearly in a March 2015 survey conducted for Vox, where a different formulation with respect to the legality of abortion was presented to each of two halves of the sample:

(Split Sample A): In general, what is your feeling right now?
Abortion should be legal in almost all cases *28%*

Abortion should be legal in most cases	*18%*
Abortion should only be legal in cases of rape, abuse, or if the woman's health is at risk	*34%*
Abortion should never be legal	*16%*
Refused to answer	*5%*

(Split Sample B): In general, what is your feeling right now?	
Women should have a legal right to safe and accessible abortion in almost all cases	*37%*
Women should have a legal right to safe and accessible abortion in most cases	*16%*
Women should only have a legal right to abortion if they were raped, abused, or their health was at risk	*32%*
Women should not have a legal right to any kind of abortion	*11%*
Refused to answer	*4%*[47]

(2) The Economist/YouGov Poll (1/2014): When do you think abortion should be legal? (A) Abortion should always be legal. There should be no restrictions on abortion. (B) Abortion should be legal, but with some restrictions (such as for minors or late-term abortions). (C) Abortion should only be legal in special circumstances, such as when the life of the mother is in danger. (D) Abortion should be illegal. It should never be allowed.
(A) Total: 18%; Men: 18%; Women: 19%
(B) Total: 39%; Men: 37%; Women: 41%
(C) Total: 31%; Men: 36%; Women: 26%
(D) Total: 12%; Men: 10%; Women: 14%[48]

(3) CNN/ORC Poll: Do you think abortion should be legal under any circumstances, legal under only certain circumstances, or illegal in all circumstances? (If "legal under only certain circumstances") Do you think abortion should be legal in most circumstances or only a few circumstances?

	Always legal	*Legal in most circumstances*	*Legal in a few circumstances*	*Always illegal*	*Unsure*
1/31-2/2/14	*27%*	*13%*	*38%*	*20%*	*2%*
5/17-18/13	*25%*	*11%*	*42%*	*20%*	*2%*
8/22-23/12	*35%*	*9%*	*37%*	*15%*	*2%*[49]

(4) Quinnipiac University poll: Do you think abortion should be legal in all cases, legal in most cases, illegal in most cases, or illegal in all cases?

	Legal in all cases	*Legal in most cases*	*Illegal in most cases*	*Illegal in all cases*	*Don't know*
11/18-23/14					
Total	*23%*	*33%*	*24%*	*12%*	*8%*
Men	*21%*	*32%*	*26%*	*12%*	*9%*
Women	*25%*	*35%*	*22%*	*12%*	*7%*

9/23-29/13	*20%*	*36%*	*23%*	*14%*	*7%*
2/14-20/12	*22%*	*33%*	*25%*	*14%*	*6%*
1/5-11/10	*18%*	*34%*	*24%*	*18%*	*5%*
7/8-13/08	*19%*	*38%*	*24%*	*14%*	*5%*
4/25-5/1/07	*17%*	*37%*	*26%*	*13%*	*7%*
5/18-23/05	*18%*	*37%*	*27%*	*14%*	*5%*
5/04	*20%*	*35%*	*26%*	*14%*	*6%*[50]

Recent actions

1. No Taxpayer Funding for Abortion Act. This legislation was re-introduced in the 114th Congress by Rep. Christopher Smith (R-NJ) in the House on 1/21/15 (H.R. 7, which has 29 co-sponsors) and by Sen. Roger Wicker (R-MS) in the Senate on 2/26/15 (S. 582, which has 43 co-sponsors as of 6/11/15). The House approved H.R. 7 on 1/22/15 by a vote of 242-179 (Roll Call #45—Yes: 239 Republicans, 3 Democrats; No: 1 Republican, 178 Democrats). Further action is pending in the Senate.[51]

Prior to the House action, NWLC issued a statement indicating, "H.R. 7 is a dangerous and misleading bill that has one goal – eliminating abortion coverage in all of the insurance markets. If H.R. 7 were to become law, all women could either lose insurance coverage that includes abortion or be stigmatized while seeking such comprehensive insurance."[52]

2. 20-Week Abortion Ban. The "Pain-Capable Unborn Child Protection Act" was re-introduced in the 114th Congress by Rep. Trent Franks (R-AZ) in the House on 1/6/15 (H.R. 36, which has 187 co-sponsors). No companion bill has yet been introduced in the Senate. The House took up H.R. 36 on 5/13/15, and cast two recorded votes on the measure. First, by a vote of 181-246 it rejected a motion by Rep. Julia Brownley (D-CA) that would have permitted the termination of pregnancies after 20 weeks if the woman's health is at risk (Roll Call #222—Yes: 181 Democrats; No: 243 Republicans, 3 Democrats). Then, it approved the bill with the 20-week ban intact, by a margin of 242-184 (Roll Call #223—Yes: 238 Republicans, 4 Democrats; No: 180 Democrats, 4 Republicans). Further action is pending in the Senate.[53]

NWLC also issued its analysis of this legislation:

- H.R. 36 would prevent women across the country from receiving an abortion at 20 weeks of pregnancy, ignoring the many reasons why a woman may need an abortion later in pregnancy…
- The American Congress of Obstetricians and Gynecologists, the nation's leading association of medical experts on women's health, has come out in strong opposition to twenty week bans.

- The revised version of H.R. 36 includes new requirements that mandate providers to use an "informed consent" form that goes against established medical practice, thereby injecting politics into the patient-provider relationship…
- Each time a similar ban on abortion has been challenged in court, it has been blocked.
- H.R. 36's lack of a health exception also violates the U.S. Constitution. The Supreme Court has made clear that, even after viability, any prohibition on abortion must include an exception for circumstances when abortion "is necessary, in appropriate medical judgment, for the preservation of the life or health" of the woman…
- Even when a woman's life is at risk, H.R. 36 forces providers to "wait and see" whether the patient really would die or suffer "substantial and irreversible physical impairment of a major bodily function" before performing an abortion…
- This latest version of H.R. 36 once again ignores the experience of a sexual assault survivor by imposing requirements that would deny her control at a critical time and force her to take actions she might not be ready or able to take, which could lead to further trauma and unnecessary risks.
- Instead of forcing all rape survivors to report the crime, the revised H.R. 36 now forces adult rape survivors either to report the crime or to seek medical care or counseling at least 48 hours prior to getting an abortion. To comply with this requirement, not only does a woman have to see a provider other than the one providing the abortion, but she cannot see any provider in the same facility where abortions are performed (unless it is a hospital)…
- A woman's health, not politics, should drive important medical decisions. H.R. 36 is an unconstitutional attempt to impose a nationwide ban on later abortion. It ignores a woman's individual circumstances, threatens her health, and takes an extremely personal medical decision away from a woman and her health care provider.[54]

3. Ban on federal funding for Planned Parenthood. On 1/8/15, Rep. Marsha Blackburn (R-TN) re-introduced H.R. 217, "Title X Abortion Provider Prohibition Act" (which has 147 co-sponsors as of 6/11/15) to prohibit the federal government from providing any family planning assistance to any entity that performs, or provides any funds to any other entity that performs, abortions. Sen. David Vitter (R-LA) introduced an identical bill in the Senate (S. 51, which has 4 co-sponsors as of 6/11/15) on 1/7/15.[55] The practical effect of this legislation would be to deny federal funding to Planned Parenthood and other organizations that provide comprehensive counseling to women on the full range of birth control options available to them. As reported in previous debate on the Pence Amendment (see above), "over 90% of health care offered by Planned Parenthood health centers is preventive…[Banning federal family planning funding for organizations like Planned Parenthood] does not in any way prohibit taxpayer funding of abortion, since federally funded health care clinics are already prevented from using federal funds to pay for abortion services."[56]

4. Health Care Conscience Rights Act. Legislation has been re-introduced in the House of Representatives that would *expand* the current exemptions from the ACA's contraceptive coverage requirement. Specifically, the Health Care Conscience Act (H.R. 940) was introduced in the House on 2/12/15 by Rep. Diane Black (R-TN), and has 147 co-sponsors as of 6/11/15. No companion bill has yet been introduced in the current session in the Senate, but in the last session an identical bill (S. 1204) was introduced in on 6/20/13 by Sen. Tom Coburn (R-OK), and had 21 co-sponsors. The bill would permit employers and insurers to opt out of any of the ACA's preventive services coverage requirements, including contraceptives, "to which the [employer] or issuer has a moral or religious objection." The bills do not further define "moral or religious" objections.[57]

5. Protect Women's Health from Corporate Interference Act. In response to the *Hobby Lobby* decision, legislation was introduced on 7/9/14 in the House (H.R. 5051, which had 162 co-sponsors) by Rep. Louise Slaughter (D-NY), and in the Senate (S. 2578, which had 46 co-sponsors) by Sen. Patty Murray (D-WA). The bills, also referred to as the "Not My Boss's Business Act," were designed "to ensure that employers that provide health benefits to their employees cannot deny any specific health benefits, including contraceptive coverage, to any of their employees or the covered dependents of such employees entitled by Federal law to receive such coverage." Specifically, they would restore contraceptive benefit coverage to the situation prior to the *Hobby Lobby* decision, which mandated such coverage except for houses of worship, and provided accommodations for religiously-affiliated nonprofit organizations with objections to contraceptive coverage.[58] In introducing the bill, Sen. Murray stated, "After five justices decided last week that an employer's personal views can interfere with women's access to essential health services, we in Congress need to act quickly to right this wrong. This bicameral legislation will ensure that no CEO or corporation can come between people and their guaranteed access to health care, period." H.R. 5051 and S. 2578 were endorsed by a number of organizations, including 9to5, the American Association of University Women (AAUW), the American Cancer Society Cancer Action Network, the American Congress of Obstetricians and Gynecologists, the Association of Women's Health Obstetric and Neonatal Nurses, the National Council of Women's Organizations, the National Women's Law Center, and the Planned Parenthood Federation of America.[59]

No further action occurred on the House bill, but on 7/16/14 an attempt was made by Majority Leader Harry Reid (D-NV) in the Senate to bring S. 2578 to the floor for action. However, this attempt was subjected to a filibuster, and the motion by Sen. Reid to invoke cloture (and thus end the filibuster) was defeated by a vote of 56-43 (because 60 votes are required on such motions), where a Yes vote was a vote in support of S. 2578 (Record Vote #228—Yes: 51 Democrats, 3 Republicans, 2 Independents; No: 42 Republicans, 1 Democrat). NOTE: Majority Leader Reid, who was a co-sponsor of S. 2578, changed his vote from Yes to No when it became apparent the motion was going to fall short of the

necessary 60 votes to enable him, under Senate rules, to ask for a reconsideration of the vote at a future date.[60]

This legislation has not yet been introduced in the current session of Congress.

6. Access to Birth Control Act. This legislation was introduced in the last session in the House by Rep. Carolyn Maloney (D-NY) on 2/15/13 (H.R. 728, which had 36 co-sponsors) and in the Senate by Sen. Cory Booker (D-NJ) on 7/17/14 (S. 2625, which had 21 co-sponsors). The bills were designed to guarantee that women with valid prescriptions for contraceptives are not denied service or subjected to intimidation or misinformation by pharmacists based on their personal views. The only exceptions were for cases where the woman fails to present a valid, lawful prescription, or is unable to pay for it, or where the pharmacist bases a refusal on a professional clinical judgment. No further action was taken on either bill, and the legislation has not yet been re-introduced in the current session.[61]

In endorsing the proposal, the National Women's Law Center issued the following statement:

It's vital that women have access to the contraceptives they need in order to make the best possible decisions about their reproductive health. Unfortunately, across the country, some pharmacists have refused to fill a woman's birth control prescription or sell her over-the-counter emergency contraception, forcing her to leave empty-handed. That is simply unacceptable. No woman should be sent home without her medication or be humiliated by a pharmacist who disapproves of her decisions. This bill is critical because it ensures that every woman will be able to leave her pharmacy with her medication in hand and her dignity intact.[62]

[1] *Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 856 (1992).*

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[3] The one exception was Kentucky, where the state courts, nonetheless, also ruled that abortions were illegal.

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