

# Abortion and Women's Rights in the USA

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## Abortion and Women's Rights in the USA

Marianna Karakoulaki

### Introduction<sup>1</sup>

1973 is marked as a very important year for women's rights in the USA. It was that year that abortion became a constitutional right and was legalized on a federal level across the USA with the historical Supreme Court Decision *Roe v. Wade*. Since then, however, the conservative right and religious leaders across the states have been trying with every means they have to overthrow the decision. With every chance the republican controlled legislatures have, they change their state laws in order to make it more and more difficult for a woman to have an abortion or even take contraceptives. Especially this year, abortion and contraception in general became one of the most discussed issues on the agendas of the republican primaries due to the Birth Control Mandate that the Obama Administration tries to push forward.

This paper discusses the impact that the debate on abortions has on women's rights in the United States. The first part will focus on the pro-life and pro-choice arguments in order to give a brief introduction to the readers; in addition, the second and main part of this paper focuses on the debate in the USA by firstly presenting the main and most influential Supreme Court decisions and bills and,

secondly by presenting the republican opposition and the developments so far. The main point of this brief overview of the current situation in the USA is that women's rights are being undermined by the efforts of the Republican Party to vote bills that will ban abortions either entirely or make it extremely difficult for a woman to have one.

### Pro Life vs. Pro Choice Arguments<sup>2</sup>

Before moving forward with the discussion it is essential to introduce arguments of both proponents and opponents of abortion.

#### *Pro-Life Arguments*

The basic argument of pro-life proponents is that abortion is murder. They base this argument on the fact that they consider the fetus as human; therefore, killing potential people not only is it wrong but also illegal. In addition, there is the argument on fetal rights; that is, since the fetus is a potential human then human rights apply.

But one of the most debatable arguments concerns the time human life begins. Pro-life supporters argue that human life begins from the beginning of conception since the fetus fulfils 4 criteria: metabolism, growth, reaction to stimuli

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<sup>1</sup> NB: Part of this article was presented at the Second Annual POLSIS Conference: Cosmopolitan Dimensions at the University of Birmingham, UK

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<sup>2</sup> BBC Ethics Guide: abortion available at: <http://www.bbc.co.uk/ethics/abortion>

and reproduction<sup>3</sup>. Furthermore others argue that abortion violates feminist principles<sup>4</sup>: since the fetus is considered a potential human, abortion is the murder of potential women.

*"We believe in a woman's right to control her body, and she deserves this right no matter where she lives, even if she's still living inside her mother's womb."*<sup>5</sup>

A more extreme interpretation of the above argument is that abortion was created by men and is used to make women available whenever men want<sup>6</sup>. Last but not least, pro-life advocates support that abortion endangers women's health, thus connecting abortion with psychological illnesses and even breast cancer; arguments that have no scientific base.

### **Pro Choice Arguments**

On the other hand, one of the most basic pro-choice argument is that women should be in control of their body and no one should mandate how it should be treated thus women have the right to decide what to do with their bodies otherwise it violates the freedom of personal choice. In addition, pro-choice supporters argue that abortion is vital for gender equality. With free access to abortion, women will be able to achieve social, economic and political equality.

According to Brian Frederking<sup>7</sup>, pro-choice advocates see abortion as a civil liberties issue. If that is the case then, the government cannot infringe upon that right. If women do not have the right to decide on abortion then their civil liberties are being violated and consequently they are not equal to men. Last but not least, the third argument that should be emphasized is that banning abortion risks women's health since that would lead them to seek alternative – and illegal – practices of abortion that could have dangerous implications, including even death.

One of the basic differences of pro-life and pro-choice advocates is the moral question of "when does life begin". Pro-life advocates support that life begins at the moment of conception whereas pro-choice advocates argue that life begins at the moment of birth. Michael Perry<sup>8</sup>, who has argued the moral aspects of human rights, supports that all human beings have inherent dignity and argues that unborn humans have inherent dignity too, therefore abortion is morally wrong<sup>9</sup>. However, even though there the human rights treaties do not define the moment life begins and therefore they do not define whether the fetus is considered a human, most treaties adopt the first article of the Universal Declaration of Human Rights which emphasizes the fact that "All human beings are born free and equal in dignity and rights". In this statement, the word "born" is used

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<sup>3</sup> Cleaver Ruse, C. & R. Schwarzwalder, "The Best Pro-Life Arguments for Secular Audiences". Available at: <http://www.frc.org/brochure/the-best-pro-life-arguments-for-secular-audiences>

<sup>4</sup> Feminists for Life: <http://www.feministsforlife.org/>

<sup>5</sup> Ibid

<sup>6</sup> Dworkin A. (1983), Right Wing Women. Available at: <http://www.nostatusquo.com/ACLU/dworkin/RightWingWomenAbortion.html>

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<sup>7</sup> Frederking, B., "Gender Equality and Abortion" (2006) at: [http://faculty.mckendree.edu/brian\\_frederking/columns/gender\\_equality.htm](http://faculty.mckendree.edu/brian_frederking/columns/gender_equality.htm)

<sup>8</sup> Perry M. J., Toward a Theory of Human Rights. Religion, Law, Courts (Cambridge University Press, 2007)

<sup>9</sup> Ibid (p.53-64)

intentionally in order to support that human life begins at birth.

Despite the importance of these two decisions, over the years the conservatives with a handful of arguments either on ethical or religious grounds tried to attack the constitutionality of abortion rights. They have also tried to overturn Roe v. Wade by promoting several bills and court decisions as state laws; this means that despite the legality of abortion on a federal level there is a large number of restrictions in every state separately.

## The Abortion Debate in the USA

### Law Overview

As it is mentioned in the introduction, it was in 1973 that abortion became legal in the USA on a federal level and that was because of the historical Supreme Court Decision "Roe v. Wade" which made abortion a constitutional right based on the right of privacy, implied by the 9th and the 14th amendments of the US Constitution. Quoting from Roe v. Wade:

*"This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy. The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent."*<sup>10</sup>

In addition to Roe v. Wade, the Doe v. Bolton Supreme Court Decision mandated that in cases of maternal health the woman's right to an abortion could not be limited by states<sup>11</sup>.

For example, there are state laws that make counselling essential before the operation. There is nothing wrong with that of course. However, during these counseling hours, which are usually 24 hours before the operation, doctors must mention some facts, that are not entirely scientifically proven, for example such as that abortion is connected to breast cancer or mental illness. Still, the most disputed bill though is the "fetal pain bill" which states that the fetus can feel pain after a gestational age of twenty weeks or older<sup>12</sup>.

<b>Public Funding</b>	17 States: Use their own funds for Medicaid 32 States and DC: Use of States Funds Prohibited (exceptions apply)
<b>Coverage by Private Insurance</b>	8 States: restricted coverage, coverage only when woman's life is endangered Most states allow abortion coverage at additional cost
<b>State Mandated Counseling</b>	19 States: Counseling before Abortion

<sup>10</sup> Roe v. Wade, 410 U.S. 113 (1973). Available at: [http://www.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0410\\_0113\\_ZS.html](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0410_0113_ZS.html)

<sup>11</sup> Doe v. Bolton, 410 U.S. 179 (1973). Available at: [http://www.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0410\\_0179\\_ZS.html](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0410_0179_ZS.html)

<sup>12</sup> "State Policies in Brief: An Overview of Abortion Laws" Guttmacher Institute (2012). Available at: [http://www.guttmacher.org/statecenter/spibs/spib\\_OAL.pdf](http://www.guttmacher.org/statecenter/spibs/spib_OAL.pdf)

<b>Waiting Periods</b>	26 States: specified waiting period, usually 24 hours before the operation, between counseling and operation
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Source: *Guttmacher Institute*<sup>13</sup>

## Birth Control Mandate

The latest controversy over abortion was sparked after the proposed birth control mandate by the Obama administration. With the new contraceptive rule under the health law, insured women will qualify for contraceptives without a co-payment as part of a range of preventive medical services<sup>14</sup>.

The conservative right and religious leaders see this mandate as an attack to religious freedom. They base their arguments on the fact that abortion, as a contraceptive method, comes in contrast to their beliefs thus it is unconstitutional and should not pass.

During a House Committee on Oversight and Government Reform hearing on February 2012 that discussed the mandate with religious leaders the republican representative (and Tea Party member), Joe Walsh, told that Barack Obama's plan to eliminate co-pays for birth control was an attack on religious freedom arguing that the mandate was not about women but about religious liberties<sup>15</sup>.

<sup>13</sup> A full list of the overview of abortion laws in the USA is available in the appendix.

<sup>14</sup> Appleby J., "5 Things You Need To Know About the Birth Control Mandate", MSNBC (02/03/2012). Available at: <http://vitals.msnbc.msn.com/news/2012/03/02/10554349-5-things-you-need-to-know-about-the-birth-control-mandate>

<sup>15</sup> "Joe Walsh: Birth Control Debate Not About Women" The Huffington Post (21/02/2012)

In addition, John Boehner, the speaker of the House of Representatives opposed the mandate by saying that the religious beliefs of the American people are being violated. However this specific hearing has caused a lot of controversy due to the fact that no woman was present in order to represent women and express women's opinions over the mandate.

In an additional hearing, supporters of the mandate, including Nancy Pelosi who was the one that took the initiative to hold that hearing, claimed that the mandate was not an issue of religious beliefs but an issue of women's health. In her speech, on March 2012, she supported that:

*"It's a matter of conscience for each woman, her doctor, her husband, her family and her God to make their own decisions. And as a Catholic, I support the right of a woman to make that decision," (...)* "The birth control and contraception is not just about reproduction; it's also about women. It's all in the larger sense about the fuller picture of women's health."<sup>16</sup>

However, the fact is that the mandate is surely not about religious rights but about women's health and women's rights. According to pro-choice advocates in the USA, Religious ideology should not mandate laws for all citizens, especially

at: [http://www.huffingtonpost.com/2012/02/21/joe-walsh-birth-control-d\\_n\\_1288822.html?ref=chicago&ncid=edlinkusaolp00000009](http://www.huffingtonpost.com/2012/02/21/joe-walsh-birth-control-d_n_1288822.html?ref=chicago&ncid=edlinkusaolp00000009)

<sup>16</sup> Parkinson J., "Women's Health vs. Religious Freedom: House Leaders Debate Birth Control Mandate", ABC News (01/03/2012). Available at: <http://abcnews.go.com/blogs/politics/2012/03/womens-health-vs-religious-freedom-house-leaders-debate-birth-control-mandate/>

since religious freedom is constitutionally established by the First Amendment<sup>17</sup>.

As far as the abortion laws are concerned, the new mandate can have a serious impact on them and on women's lives. Until now 8 states restrict coverage of abortion in private insurance plans, most often limiting coverage only to when the woman's life would be endangered if the pregnancy were carried to term. Most states allow the purchase of additional abortion coverage at an additional cost. Seventeen states use their own funds to pay for all or most medically necessary abortions for Medicaid enrollees in the state. Thirty-two states and the District of Columbia prohibit the use of state funds except in those cases when federal funds are available: where the woman's life is in danger or the pregnancy is the result of rape or incest. Forty-six states allow individual health care providers to refuse to participate in an abortion. Forty-three states allow institutions to refuse to perform abortions, sixteen of which limit refusal to private or religious institutions<sup>18</sup>.

The benefits of the mandate cannot be denied. Women's lives will be improved not only economically but also socially. The mandate will give access to basic health services for women, such as contraception, mammograms, prenatal and cervical cancer screenings, and other

preventive care, which until now it was difficult due to their high cost.

## Conservative Opposition and the Elections

There is no surprise that the official stance of the religious leaders in the US is against abortion with their main argument being that "*Life begins at conception*"<sup>19</sup>. However, most of the attention is given to the Christians and their denominations due to the influence they have in the public. Abortion is one of the main political debates in this year's primary elections in general with the conservative right paying attention to their Christian values and the more liberals giving emphasis on women's rights. The republican candidates have given a special emphasis on the fact that they were all pro-life and that was an important issue in their campaigns and one of their main arguments against Barack Obama who is in favor of the Roe v. Wade decision.

Rick Santorum, who is a Roman Catholic and considered to have some of the most extreme pro-life ideas, supported that abortion should be illegal even in cases involving rape and incest. He has also taken the debate a step further by calling for abortion doctors to be prosecuted for crimes<sup>20</sup>. To make matters worse, Santorum, when asked what he would do if one of his daughters was raped, got pregnant and wanted to have an abortion,

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<sup>17</sup> "(The) Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I

<sup>18</sup> "State Policies in Brief: An Overview of Abortion Laws", Guttmacher Institute, (2012) Available at: [http://www.guttmacher.org/statecenter/spibs/spib\\_OAL.pdf](http://www.guttmacher.org/statecenter/spibs/spib_OAL.pdf)

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<sup>19</sup> "Religious Groups' Official Positions on Abortion" The Pew Forum, (2012). Available at: <http://www.pewforum.org/Abortion/Religious-Groups-Official-Positions-on-Abortion.aspx>

<sup>20</sup> "Rick Santorum On Opposition To Abortion In Cases Of Rape: 'Make The Best Out Of A Bad Situation'" The Huffington Post (23/01/2012). Available at: [http://www.huffingtonpost.com/2012/01/23/rick-santorum-abortion-rape\\_n\\_1224624.html](http://www.huffingtonpost.com/2012/01/23/rick-santorum-abortion-rape_n_1224624.html)

he said that he would advise her to *"accept this 'horribly' created baby because it was still a gift from God, even if given in a 'broken' way"*<sup>21</sup>.

## Conclusions

To sum up, there are a lot of arguments both by pro-life and pro-choice advocates. Yet, there is one fact that cannot be denied: Abortion is a woman's choice or at least it should be a woman's choice. In a country that is famous for its civil rights movement it is absolutely unacceptable to discuss about women's rights without discussing about abortion rights. If the birth control mandate does not come into effect then there will be a serious drawback not only for women's rights but for gender equality in general. The birth control mandate puts an end to several problems that exist in the US Health Care System, especially for the less fortunate, since it will allow women enrolled in Medicaid to have the right access to contraceptive methods.

Furthermore, the fact that the mandate was introduced this year has had a serious impact on the presidential race as it became one of the most discussed issues during the primary elections. Nevertheless, there was no surprise on the republican primaries' stance especially due to the fact that they never forget to mention their religious (Christian) values to the end of gaining the support of the most religious part of the population. That has caused an important dilemma among the more conservative democrat voters. To conclude, it should be said that as long the debate against abortion rights continues in the USA, gender equality and women's rights will not be fully achieved.

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<sup>21</sup> Ibid.

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## Appendix

<b>ABORTION LAWS OVERVIEW</b>	
<b>Physician and hospital requirements</b>	36 States: Abortion by licensed physician 20 States: Abortion in a hospital after a specified point 20 States: Involvement of a second Physician
<b>Gestational Limits</b>	40 States: Abortions prohibited for Medicaid enrollees (except when necessary)
<b>Partial Birth</b>	18 States: Prohibited
<b>Public Funding</b>	17 States: Use their own funds for Medicaid 32 States and DC: Use of States Funds Prohibited (exceptions apply)
<b>Coverage by Private Insurance</b>	8 States: restricted coverage, coverage only when woman’s life is endangered Most states allow abortion coverage at additional cost
<b>Refusal</b>	46 States: Health Care providers can refuse participation in abortion 16 States: limited to private and religious institutions
<b>State Mandated Counselling</b>	19 States: Counselling before Abortion
<b>Waiting Periods</b>	26 States: specified waiting period, usually 24 hours before the operation, between counselling and operation
<b>Parental Involvement</b>	37 States: parental involvement required 22 States: one or both parents 11 States: inform one or both parents 4 States: both parental consent and notification

Source: GUTTMACHER INSTITUTE