League of Women Voters of Utah Study of Utah Abortion Laws

An educational study

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An in-depth look at Utah legislative bills from 1975-2020
and how they affect a woman's right to health care decisions.

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Introduction

Since the 1973 U.S. Supreme Court decision in *Roe v. Wade*[1], the Utah Legislature has considered 95 bills relating to abortion and has passed 43. In the 2020 legislative session alone, Utah lawmakers considered 11 bills to add restrictions to or prohibit abortion with certain exceptions.

A woman's right to health care and privacy continues to be at risk in Utah and the nation. Watching the Utah Legislature spend time and effort on the subject of abortion prompted the League of Women Voters of Utah to perform a study of current laws, their impact on the public, and how these laws came to be. This study of Utah's abortion laws shows that the Legislature continues to attempt to add pressure on women and their physicians to reduce abortions.

In 2020, seven abortion-related bills were signed into Utah law, including SB 174 which prohibits abortion entirely except in cases of rape, incest or serious risk to bodily function or death of the woman, if allowed by the Supreme Court.

Since 2016, the Legislature has considered 19 bills and passed 13, (*see Appendix A*). A search of Utah code using the word "abortion" results in 60 mentions. Most laws relating to abortion are in the Title 76, Criminal Code. *See Appendix B for current Utah law*.

The study committee also reviewed in detail the legislative paths of four abortion-related bills, three of which became law and one (HB 364) that failed after all female senators protested on the last day of the session. Understanding the origin and debate on these bills is important to any League efforts to intercede as abortion bills are considered. The study committee also reviewed websites from three organizations that usually testify in favor of abortion restrictions: Pro-Life Utah, the Eagle Forum and Abortion Free Utah. Testifying against are Planned Parenthood, the ACLU and physicians or medical organizations such as the Utah Section of American College of Obstetricians and Gynecologists. In 2020, Sen. Curtis Bramble (R-16) and Reps. Karianne Lisonbee

[1] https://www.britannica.com/event/Roe-v-Wade

(R-14), Cheryl K. Acton (R-43), and Steve R. Christiansen (R-47) were the most active legislators sponsoring bills opposing abortion.

It is unclear whether the Utah Legislature's actions reflect the public's opinion. A recent poll showed that Utahns think there are enough abortion laws[2]. In legislative committee testimony, the poll was called biased and one-sided.

For Utahns as for the country, access to abortion rests primarily with the U.S. Supreme Court's interpretation of the Due Process clause of the 14th Amendment in *Roe v. Wade*. Numerous decisions following *Roe v. Wade* have added to or taken away a woman's right to abortion. Supreme Court decisions are pending as we write this study. The League expects continued consideration of state legislation to regulate abortion. This study provides background and pertinent material for League members and other residents to use as they participate in discussions about a woman's right to an abortion.

1. History of Abortion in the United States[3]

People around the world have used abortion to control their reproduction at every point in history, and in every known society — regardless of its legality.

In the United States, abortion was originally legal before quickening[4], the point at which a pregnant person feels the fetus move, generally at around four or five months. Abortion was widely practiced, primarily done using herbs with the assistance of midwives and other female healers. Some of the earliest anti-abortion laws were poison control measures passed in the mid-19th century in response to the proliferation of chemical abortifacients (substances that induce abortions) which became popular at the time. But by the late 19th century, most states had laws banning abortion except to save the life or health of a pregnant person.

The move to ban abortions occurred for a variety of reasons. First, it was part of a backlash against the growing women's rights movement, which advocated for "voluntary motherhood." Even though the movement did not support abortion,

[2] https://www.sltrib.com/news/politics/2020/02/24/poll-most-utahns-would/
[3] https://www.ourbodiesourselves.org/book-excerpts/health-article/u-s-abortion-history/
[4] https://www.theatlantic.com/past/docs/issues/97may/abortex.htm

the demand for birth control was a threat to male dominance. Restricting abortion was part of an effort to control women[5] and confine them to a traditional childbearing role. It was also a way for men in the newly established medical profession to wrest control over the highly profitable business of childbirth from midwives, whom they condemned for performing abortions.

The attacks on abortion access were rooted in racism and white supremacy[6]. White doctors often targeted Black midwives for particular condemnation. People seeking to criminalize abortion were also motivated by increased immigration, specifically of Catholic immigrants, and the declining birthrate among U.S.-born white Protestant women in the late 1800s. The U.S. government and the eugenics movement were concerned about "race suicide" and wanted white Protestant women to have more children.

Despite the legal prohibitions, people continued to have abortions, although surreptitiously. They were subjected to fear and shame, which took a heavy toll on their lives, their health, and their families. While there were providers who practiced safely, finding one often depended upon a woman's economic situation, her race, and where she lived. Women with money could sometimes leave the country or find a physician who would perform the procedure for a high fee. Poor women and women of color suffered disproportionately. For the most part, they were either at the mercy of incompetent practitioners with questionable motives, unable to find anyone who would perform the procedure, or they were forced to resort to dangerous self-abortions. In desperation, they inserted knitting needles or coat hangers into their vaginas and uteruses, douched with solutions such as lye, or swallowed strong drugs or chemicals.

Because many deaths were not officially attributed to unsafe, illegal abortion, it is impossible to know the exact number of lives lost. However, thousands of women a year were treated for health complications due to botched, unsanitary, or self-induced abortions, and many died. Others were left infertile or with chronic illness and pain. Cook County Hospital, Chicago's public hospital, had a whole

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[5] https://publishing.cdlib.org/ucpressebooks/view?docId=ft967nb5z5&chunk.id=d0e71&toc.depth=1&toc.id=d0e71&brand=ucpress

[6] https://www.aclu.org/news/racial-justice/the-racist-history-of-abortion-and-midwifery-bans/

ward[7] for women suffering from complications of illegal abortions. That ward was often full.

Making Illegal Abortion Safer

Wherever abortion is illegal[8], caring and dedicated people take enormous risks to provide safe abortions clandestinely, to treat people with complications, and to help them find safe providers.

Before the Supreme Court's landmark *Roe v. Wade*[9] decision legalizing abortion in 1973, some well-trained physicians and other medical practitioners risked imprisonment, fines, and loss of their medical licenses to provide abortions. Information about these services often spread by word of mouth.

In the late 1960s, the Clergy Consultation Service on Abortion[10] — a network of concerned pastors and rabbis — set up referral services to help women find safer illegal abortions. Early second-wave feminist groups formed their own independent referral groups. In Chicago, a group of trained laywomen called the Abortion Counseling Service of the Chicago Women's Liberation Union went even further, creating an underground feminist abortion service[11] in 1969. The group, whose code name was Jane, provided safe, inexpensive, and supportive illegal abortions. Over a four-year period, the group provided more than 11,000 first- and second-trimester abortions with a safety record comparable to that of today's legal medical facilities. Laura Kaplan, a former Jane member and the author of "The Story of Jane: The Legendary Underground Feminist Abortion Service[12]," describes the women involved:

"We were ordinary women who, working together, accomplished something extraordinary. Our actions, which we saw as potentially transforming for other

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[7] https://publishing.cdlib.org/ucpressebooks/view?docId=ft967nb5z5&chunk.id=d0e4190&toc.depth=1&toc.id=&brand=ucpress

[8] "The information in this fact sheet can be found in Bearak J et al., Unintended pregnancy and abortion by income, region, and the legal status of abortion: estimates from a comprehensive model for 1990–2019, *Lancet Global Health*, 2020, 8(9), http://www.thelancet.com/journals/langlo/article/PIIS2214-109X(20)30315-6/fulltext"

[9] https://www.oyez.org/cases/1971/70-18

[10] http://findingaids.library.northwestern.edu/catalog/inu-ead-spec-archon-503

[11] https://www.cwluherstory.org/jane-abortion-service/

[12] https://press.uchicago.edu/ucp/books/book/chicago/S/bo37935936.html

women, changed us, too. By taking responsibility, we became responsible. Most of us grew stronger, more self-assured, confident in our own abilities. In picking up the tools of our own liberation, in our case medical instruments, we broke a powerful taboo. That act was terrifying, but it was also exhilarating. We ourselves felt exactly the same powerfulness that we wanted other women to feel."

Organizing to Change the Law

In the 1960s, inspired by the civil rights and antiwar movements, women organized a women's liberation movement. Reproductive rights were a big priority. Advocates fought, marched, and lobbied to make abortion safe and legal. At speak-outs[13], women talked publicly for the first time about their illegal abortion experiences, making visible the millions of people who were willing to break the law and risk their lives to obtain an abortion, or help someone else do so. The movement also connected abortion rights to gender equality.

Between 1967 and 1973, 14 states reformed and four states repealed restrictive abortion laws. Changes included allowing access to abortion in certain circumstances, such as when the pregnancy was the result of rape or incest. In 1970, New York became the first state to legalize abortion on demand through the 24th week of pregnancy. Hawaii had earlier legalized abortion through 20 weeks, but only for residents of that state, while Washington, D.C. also allowed abortions. Two other states, Alaska and Washington, followed, and women who could afford it began flocking to the places where abortions were legal. Feminist networks offered support, loans, and referrals and fought to keep prices down. But for every person who managed to get to New York or the few other places where abortion was legal, many others with limited financial resources or mobility still sought illegal abortions.

On January 22, 1973, the U.S. Supreme Court struck down all existing criminal abortion laws in the landmark *Roe v. Wade*[14] decision. The Court ruled that people have a fundamental "right of privacy … founded in the Fourteenth Amendment's concept of personal liberty." The Court weighed the pregnant person's right to privacy against the state interests in maternal health and fetal life. Dividing pregnancy into three trimesters, the Court held that the abortion decision must be left to the pregnant person in consultation with their doctor during the first

[13] https://www.nytimes.com/2019/03/23/opinion/sunday/abortion-speakout-anniversary.html
[14] https://www.oyez.org/cases/1971/70-18

trimester; that the state may regulate abortion in ways that are reasonably related to maternal health in the second trimester, and that during the third trimester the state may regulate or prohibit abortion, except where necessary, in appropriate medical judgment, for the life and health of the pregnant person.

Weakening the Constitutional Protection for Abortion

While many were thrilled and relieved that abortion was now legal across the country, others were furious and turned to state legislatures to restrict access. From 1973 until 1992, restrictions on abortion were passed in almost every state. Abortion rights activists appealed, but the Supreme Court rejected hearing most of these cases. However, during this time the Court handed down two major rulings that limited young and poor women's access to abortion.

In *Bellotti v. Baird*[15] (1979), the Supreme Court ruled that states could insist that a minor obtain parental consent to obtain an abortion. The Court, however, required that states provide a judicial bypass option, whereby young people could petition a judge for permission to obtain an abortion without notifying their parents if they could show that they were mature enough to make their own decision or that the abortion was in their best interests. Rebecca Suzanne "Becky"[16] Bell was the first person known to die of an illegal abortion because of parental consent laws. On September 16, 1988, the 17-year-old Indiana teenager died of complications from a septic abortion after becoming discouraged from obtaining a legal procedure because of Indiana's parental consent law.

The Supreme Court also allowed Congress to block Medicaid funding for abortion. When *Roe v. Wade* legalized abortion, Medicaid[17] — a program funded jointly by the federal government and individual states — covered abortion care as part of comprehensive health care services provided to low-income women. But in 1976, Congress passed the Hyde Amendment[18], which banned the use of federal funding for abortion care, except in limited cases. Most states followed, instituting bans in their state Medicaid programs. Because so many women depend upon Medicaid for their health care, the Hyde Amendment effectively made it much more difficult for low-income women — disproportionately women

[15] https://www.oyez.org/cases/1978/78-329
[16] https://www.chicagotribune.com/news/ct-xpm-1990-04-08-9001290267-story.html
[17] https://www.prochoice.org/pubs_research/publications/downloads/about_abortion/public_funding.pdf
[18] https://www.plannedparenthoodaction.org/issues/abortion/hyde-amendment

of color — to get abortions. On October 3, 1977, a young mother named Rosie Jiménez[19], pursuing a nursing degree to support herself and her daughter, died after having an abortion in Mexico because Medicaid would not cover the cost of abortion in the United States. She was the first known victim of the Hyde Amendment. In 1980, in *Harris v. McRae*[20], the Supreme Court upheld Hyde in a narrowly divided ruling, saying that women's constitutional rights were not violated by the ban on federal funding for abortions, even if the abortion is medically necessary for a person's health.

The next major Supreme Court ruling regarding abortion access came in 1992, when the Court, in *Planned Parenthood v. Casey*[21], considered a highly restrictive Pennsylvania law that required a 24-hour waiting period, spousal notification, parental consent, a mandate that doctors give biased counseling to people seeking abortion health care, and burdensome reporting requirements. In its decision, the Court abandoned the trimester framework and created a new legal test for allowable restrictions. Before viability — the point at which a fetus can survive outside the womb, somewhere between 24 and 28 weeks — the Court allowed restrictions on abortion as long as the law does not place an "undue burden" on a person's access to abortion. The Court defined an "undue burden" as a restriction that has the "purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion."

Under this new standard, the Court upheld all the Pennsylvania restrictions except for spousal notification, which it noted could place women in danger from abusive husbands. The Court allowed states to ban abortion after viability, as long as they had an exception to preserve the life or health of the pregnant person.

In the aftermath of *Casey*, state and local legislatures began to pass more and more laws to restrict abortion, and the Supreme Court has more often upheld them. In the 2000 case of *Stenberg v. Carhart*[22], the Supreme Court struck down a Nebraska statute prohibiting what anti-abortion advocates called "partial birth abortion." Although the term does not refer to any medical procedure, the law was interpreted as prohibiting doctors from performing an intact dilation and

[19] https://abortionfunds.org/remembering-rosie/
[20] https://www.oyez.org/cases/1979/79-1268
[21] https://www.oyez.org/cases/1991/91-744
[22] https://www.oyez.org/cases/1999/99-830

extraction abortion[23], a type of abortion sometimes used for second trimester abortions. The Court held that if a particular abortion method may be safer in some circumstances, the state may not flatly ban the method, but must allow a maternal health exception to the ban.

But three years later, Congress passed a nearly identical law, the so-called "Partial-Birth Abortion" (PBA) Ban Act of 2003, which was signed into law by President George W. Bush. Abortion rights advocates once again challenged the law, but this time the Court had two new conservative appointees: Justice John Roberts joined the Court in 2005, and Justice Samuel Alito in 2006. As a result, the Supreme Court overruled *Stenberg v. Carhart* and upheld the abortion ban in the 2007 case of *Gonzales v. Carhart*[24]. This law is one of many instances since *Roe* of politicians dictating the practice of medicine, without regard for medical science or the health of pregnant people. It also highlights the increasing politicization of the Supreme Court: a candidate's position on abortion had become a litmus test for Republican presidents.

In her dissent to *Gonzales v. Carhart*, Supreme Court Justice Ruth Bader Ginsburg decried[25] the ruling, saying:

"Today's decision is alarming ... It tolerates, indeed applauds, federal intervention to ban nationwide a procedure found necessary and proper in certain cases by the American College of Obstetricians and Gynecologists. It blurs the line, firmly drawn in Casey, between previability and postviability abortions. And, for the first time since *Roe*, the Court blesses a prohibition with no exception safeguarding a woman's health."

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[23] https://www.guttmacher.org/gpr/2017/02/de-abortion-bans-implications-banning-most-common-second-trimester-procedurehttps://www.oyez.org/cases/2006/05-380

[24]

[25] https://supreme.justia.com/cases/federal/us/550/124/#tab-opinion-1962400

2. The Status of Abortion Laws in the United States

An Ever-Growing Number of Restrictions

The U.S. League of Women Voters notes that gerrymandered districts helped anti-abortion legislators to pass 479 state laws[26] between 2011 and 2019[27].

According to the Guttmacher Institute, since the 1973 *Roe v. Wade* decision, states have passed more than 1,000[28] abortion restrictions. More than a third of them[29] were enacted between 2011 and 2019, accelerating after the election of President Barack Obama. These laws ban abortion after a particular gestational age[30] or based on sex, race, or genetic anomaly[31], ban specific abortion methods[32], impose biased counseling and waiting periods[33], require unnecessary ultrasounds[34], restrict access to medication abortions[35], limit who can provide abortion health care, and impose targeted regulation of abortion providers (TRAP) regulations[36].

TRAP regulations single out abortion providers and facilities by mandating burdensome and medically unnecessary requirements that are more stringent than requirements for other medical procedures of similar risk. For example, TRAP laws sometimes mandate the width of corridors in abortion facilities or that physicians obtain admitting privileges at a nearby hospital (when no nearby hospital is willing to grant them). According to anti-abortion rights activists, the requirements make abortion safer, but there is no evidence that this is true. Abortion is one of the safest medical procedures[37] in the country, far safer than pregnancy and childbirth, and complications are rare. The true intent of TRAP laws is not to improve the safety of abortion but to place onerous restrictions on clinics and abortion providers so that they must stop providing services. According

[26] https://www.guttmacher.org/article/2019/05/unprecedented-wave-abortion-bans-urgent-call-action
[27] https://www.lwv.org/blog/majority-people-support-safe-legal-access-abortion-so-why-it-under-threat
[28] https://www.guttmacher.org/state-policy/explore/overview-abortion-laws
[29] https://www.guttmacher.org/laws-affecting-reproductive-health-and-rights-2015-state-policy-review
[30] https://www.guttmacher.org/state-policy/explore/state-policies-later-abortions
[31] https://www.guttmacher.org/state-policy/explore/abortion-bans-cases-sex-or-race-selection-or-genetic-anomaly
[32] https://www.guttmacher.org/state-policy/explore/bans-specific-abortion-methods-used-after-first-trimester
[33] https://www.guttmacher.org/state-policy/explore/counseling-and-waiting-periods-abortion
[34] https://www.guttmacher.org/state-policy/explore/requirements-ultrasound
[35] https://www.guttmacher.org/state-policy/explore/medication-abortion
[36] https://www.guttmacher.org/evidence-you-can-use/targeted-regulation-abortion-providers-trap-laws
[37] https://www.guttmacher.org/fact-sheet/induced-abortion-united-states

to the Guttmacher Institute, as of 2020, 26 states[38] including Utah have TRAP laws or policies in place.

A TRAP law challenge finally reached the Supreme Court in the 2016 case of *Whole Woman's Health v. Hellerstedt*[39] (2016). The case involved two provisions of a Texas law that required physicians who perform abortions to have admitting privileges at a nearby hospital and required abortion clinics in the state to have facilities comparable to an ambulatory surgical center. The Court ruled that these restrictions violated the 14th Amendment because they imposed an undue burden on abortion access by placing a substantial obstacle in the path of women seeking abortion health care. The Court said that reviewing courts must "consider the burdens a law imposes on abortion access together with the benefits those laws confer" and that courts retain "an independent constitutional duty to review factual findings where constitutional rights are at stake." Texas tried to justify the restrictions on the grounds of protecting women's health, but evidence in the record proved that the provisions provided no medical benefit and in fact endangered women's health. The court is saying that this is not an issue on which a state alone can make decisions[40].

After Donald Trump became president, he appointed two new conservative justices to the Supreme Court — Neil Gorsuch and Brett Kavanaugh — which emboldened anti-abortion rights activists, policymakers and conservative judges. The appointments also emboldened state legislatures. In the first five months of 2019, seven states[41] passed bans on abortion during the first trimester. These are unconstitutional, as long as *Roe* stands. Georgia, Kentucky, Louisiana, Mississippi and Ohio adopted so-called "fetal heartbeat" bills that prohibit abortions after six weeks of pregnancy, when doctors can usually start detecting embryonic cardiac

[38] https://www.guttmacher.org/state-policy/explore/targeted-regulation-abortion-providers

[39] https://www.oyez.org/cases/2015/15-274

[40] https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjQk7yUp4PuAhWFBc0KHSrjCvEQFjAHegQIChAC&url=https%3A%2F%2Fscholarlycommons.law.case.edu%2Fcgi%2Fviewcontent.cgi%3Farticle%3D1142%26context%3Dfaculty_publications&usg=AOvVaw3CErnVJ0sOeW5D5VrGNyO6

[41] https://www.nytimes.com/interactive/2019/us/abortion-laws-states.html#:~:text=New%20abortion%20ban%20Abortion%20ban%20before%202019%20Georgia%2C,doctors%20can%20usually%20start%20detecting%20a%20fetal%20heartbeat.

activity. Missouri passed an eight-week ban. Alabama voted to ban all abortions except to save a pregnant person's life, with no exception for rape or incest. Despite the 2016 *Whole Woman's Health* decision, the Fifth Circuit Court of Appeals upheld an identical admitting privileges law in Louisiana, purporting to distinguish the effects of the law from the Texas law at issue in *Whole Woman's Health*. In June of 2020, the Supreme Court narrowly ruled in *June Medical Services v. Russo*[42] that the Louisiana law was unconstitutional. Chief Justice Roberts, who had dissented in *Whole Woman's Health*, concurred in the judgment to provide a fifth vote striking down the Louisiana law. In his opinion, Roberts criticized *Whole Woman's Health* and suggested ways to narrow the undue burden standard in future cases, but he concurred on the grounds of respect for precedent. However, he created a blueprint for states to restrict abortion, and in August 2020, Arkansas enacted four new restrictions. One of these, a ban on "Dilation and Extraction" procedures, prevents the most common method of providing second trimester abortion care. Another requires that abortion providers notify law enforcement officials when a patient 17 years old or younger seeks an abortion.

During the COVID-19 epidemic in 2020, many states banned all non-essential medical procedures. Anti-abortion rights policymakers in 12 states[43] took this as an opportunity and attempted to close abortion clinics by declaring abortion health care non-essential. Abortion rights advocates challenged the bans in many states. The battle was particularly fierce in Texas[44] where a legal challenge went through the court system for weeks, wreaking havoc to abortion access. Courts blocked bans in Alabama, Iowa, Ohio, Oklahoma and Tennessee. The 8th Circuit Court of Appeals upheld a ban in Arkansas. In response to these restrictions, the American College of Obstetricians and Gynecology, the Society of Family Planning, and other mainstream medical institutions issued a joint statement affirming that abortion is essential health care[45] and should not be canceled or delayed, because "the consequences of being unable to obtain an abortion profoundly impact a person's life, health, and well-being."

[42] https://www.oyez.org/cases/2019/18-1323
[43] https://msmagazine.com/2020/04/29/roundup-state-by-state-heres-where-abortion-restriction-battles-stand/
[44] https://msmagazine.com/2020/04/27/texas-abortion-battle-in-the-age-of-corona-a-timeline/
[45] https://www.acog.org/en/News/News%20Releases/2020/03/Joint%20Statement%20on%20Abortion%20Access%20During%20the%20COVID%2019%20Outbreak

Personhood Laws

Anti-reproductive rights activists use the concept of "personhood" to attempt to pass laws that define zygotes, embryos, and fetuses as "persons" separate from the pregnant person, and with the full legal rights as a person. The goal of personhood laws is to criminalize abortion as well as certain forms of birth control that work by preventing sperm from fertilizing an egg. Opponents of abortion rights have even used proposed measures to prevent doctors from treating complicated and potentially dangerous pregnancies. Many state legislatures[46] have considered legislation with personhood language, and several have passed them, including Alabama, Kansas and Missouri.

Funding Abortion

In addition to restrictive state laws, the federal Hyde Amendment and subsequent federal and state laws banning public funding for abortion continue to limit access for low-income people who are disproportionately women of color. Currently Medicaid covers abortion only in cases of rape, incest, or when the pregnant person's life is endangered by an illness, injury, or physical disorder.

While the Hyde Amendment restricts state Medicaid programs from using federal funds to cover abortion outside the above circumstances, states may use their own funds to cover abortion. In 2020, 16 states[47] fund abortion services on the same terms as other pregnancy related health services, which means these states use their own funds to cover abortions in addition to what the Hyde Amendment allows. Thirty-three states and the District of Columbia[48] follow the federal standard and provide abortions only in the circumstances outlined in the Hyde Amendment. In 2017, over half of reproductive-age women on Medicaid — 7.9 million women — lived in states that restrict abortion coverage. The Hyde Amendment and its derivatives have expanded in scope and currently also limit federal funding of abortion services for federal employees, women in the military and Peace Corps, American Indian and Alaskan native women who use the Indian Health Service, and women in federal prisons and immigration detention facilities.

[46] https://rewire.news/legislative-tracker/law-topic/personhood/
[47] https://www.guttmacher.org/state-policy/explore/state-funding-abortion-under-medicaid
[48] https://www.guttmacher.org/state-policy/explore/state-funding-abortion-under-medicaid

Currently activists, under the leadership of women of color, organizations and their allies, are attempting to repeal Hyde and restore public funding for abortion health care. In a direct challenge to the Hyde Amendment, U.S. Reps. Barbara Lee (D-CA), Jan Schakowsky (D-IL), and Diane DeGette (D-CO), introduced the Each Woman Act[49] in 2015 to ensure coverage of abortion for any person, regardless of how much she earns or the type of insurance she has. The All* Above All[50] campaign unites organizations and individuals to lift the bans on public insurance coverage for abortions.

Congress has also blocked foreign aid from covering or even providing information on abortion health care. The Helms Amendment[51] — first passed in 1973 and named after the former ultra-conservative Sen. Jesse Helms (R-N.C.) — bars the use of U.S. foreign aid funds to support abortion care. In 1984, Ronald Reagan instituted the Mexico City Policy, which came to be known as the "global gag rule." Under this gag rule, foreign nongovernmental organizations that want to continue receiving any U.S. family planning funding must agree to stop providing abortion-related services or advocating for the expansion of abortion access, using any source of their funding. The global gag rule has been in place under Republican presidents since 1984, although repealed by every Democratic president. In 2017, President Donald Trump expanded the global gag rule to apply to all U.S. global health assistance.

Some members of Congress have fought against these global restrictions on abortion care. In 2019, Sen. Jeanne Shaheen (D-NH) and Rep. Nita Lowey (D-NY) introduced the Global Health, Empowerment and Rights (HER) Act[52], which would repeal the global gag rule. And in 2020, Rep. Jan Schakowksy (D-Ill.) introduced the Abortion is Health Care Everywhere Act of 2020[53], the first-ever legislation to repeal the Helms Amendment. That bill is currently in the House Committee on Foreign Affairs.

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[49] http://rhrealitycheck.org/article/2015/07/08/congressional-call-end-hyde-amendment-puts-pro-choice-advocates-offense/

[50] https://allaboveall.org/resource/about-the-each-woman-act/

[51] https://www.guttmacher.org/tags/helms-amendment

[52] https://www.guttmacher.org/article/2019/02/global-her-act-would-repeal-harmful-global-gag-rule

[53] https://schakowsky.house.gov/media/press-releases/schakowsky-colleagues-introduce-first-ever-bill-repeal-helms-amendment-47-year

In March 2019, the Trump administration enacted a domestic gag rule, which prohibits U.S. clinics receiving Title X family planning funds from referring their patients for abortion health care. For decades, Title X clinics have provided free or low-cost reproductive health care to low-income people. The domestic gag rule has devastated the Title X network's capacity, cutting it by half[54].

Prohibitions or restrictions on abortion coverage are not limited only to statutes governing public funding. In 2010, the Affordable Care Act (ACA) was signed into law, extending the Hyde Amendment restrictions on abortion coverage to states' newly created health insurance exchanges. The ACA also allows states[55] to prohibit abortion coverage entirely in health insurance plans offered through an exchange. Since the law was implemented, 26 states[56] including Utah have barred health plans participating in the exchange from covering abortion. The ACA also permits providers and facilities to refuse to provide, pay, or refer for abortion services under federal refusal provisions[57]. Forty-six states[58] including Utah have similar laws.

Advocates for reproductive health and rights continue to fight the ACA's restrictions on abortion coverage. These restrictions force some people to continue pregnancies they do not want and may put their health or lives at risk. As more states attempt to limit or ban private insurance coverage for abortion services, organizations including the Center for Reproductive Rights[59] and the Guttmacher Institute[60] are pushing to ensure coverage for all pregnancy-related care, including abortion, under the ACA. Private abortion funds[61] around the country attempt to fill the gap created by the myriad restrictions on funding.

Protecting Abortion Rights

Until recently, the battle to keep abortion safe and legal has been largely a defensive one. However, the reproductive justice movement is pushing a bolder

[54] https://www.guttmacher.org/article/2020/02/trump-administrations-domestic-gag-rule-has-slashed-title-x-networks-capacity-half

[55] http://www.ncsl.org/research/health/health-reform-and-abortion-coverage.aspx

[56] https://www.guttmacher.org/sites/default/files/pdfs/spibs/spib_RICA.pdf

[57] https://www.guttmacher.org/state-policy/explore/refusing-provide-health-services

[58] https://www.guttmacher.org/state-policy/explore/refusing-provide-health-services

[59] http://www.reproductiverights.org/

[60] https://www.guttmacher.org/

[61] https://abortionfunds.org/

approach. There have been important gains for abortion rights at the federal and state levels. Thirteen states and the District of Columbia[62] have laws affirmatively protecting the right to abortion. Several states have tried to restrict fake pregnancy clinics that mislead and coerce pregnant people to prevent them from accessing abortion, but in the 2018 case of *National Institute of Family and Life Advocates v. Becerra*[63], the Supreme Court ruled that a California law regulating fake pregnancy clinics violated the First Amendment. In other gains, several states have passed laws to protect patients and providers from anti-abortion extremists. For decades, the anti-abortion rights movement has waged a widespread campaign[64] of harassment, violence and terror against abortion doctors, staff, clinics and patients. Their tactics have included blockades of clinic entrances, facility invasions, property damage, stalking, death threats, and physical violence. Anti-abortion extremists have murdered eleven people since the early 1990s — four doctors, two clinic employees, a security guard, a police officer, a clinic escort, and two people who were at an abortion clinic. They have injured many more.

When this violence escalated in the early 1990s, Congress passed the Freedom of Access to Clinic Entrances Act of 1994, which prohibits intentional property damage and the use of "force or threat of force or … physical obstruction" to "injure, intimidate or interfere with" someone entering a health care facility. States have also attempted to protect reproductive health clinics. Fourteen states[65] have laws to protect access to clinics, including laws prohibiting blocking an entrance, threatening or intimidating staff or patients, damaging a facility, making harassing phone calls, creating excessive noise outside a clinic, possessing or having access to a weapon during a demonstration at a facility, trespassing, or releasing a substance that produces noxious odor on clinic premises. Several states have laws creating a buffer zone around clinics or a "bubble zone" around a person within a specific distance of a clinic's entrance or driveway. In the 2000 decision *Hill v. Colorado*[66], the Supreme Court upheld a floating 8-foot "bubble zone" law in Colorado, but in the 2014 case of *McCullen v. Coakley*[67], the Court struck down a Massachusetts law that placed a 35-foot buffer zone around clinic

[62] https://www.guttmacher.org/state-policy/explore/abortion-policy-absence-roe
[63] https://supreme.justia.com/cases/federal/us/585/16-1140/
[64] https://prochoice.org/education-and-advocacy/violence/violence-statistics-and-history/
[65] https://www.guttmacher.org/state-policy/explore/protecting-access-clinics
[66] https://www.oyez.org/cases/1999/98-1856
[67] https://www.oyez.org/cases/2013/12-1168

entrances. Despite these protections, more than half of all clinics[68] that provide abortion care still report experiencing threats and intimidation against doctors and staff.

To strengthen abortion rights more broadly, advocates are now pushing for the Women's Health Protection Act[69], which would prohibit a range of abortion restrictions, including pre-viability bans, state mandates of unnecessary procedures and inaccurate counseling, barriers to telemedicine abortion, TRAP laws, and forcing extra in-person visits to a doctor.

Telemedicine and Medication Abortion

Telemedicine abortion[70] combines medication abortion, which uses pills to end a pregnancy, with telemedicine, which allows health care providers to meet with patients via videoconferencing or telephone consultations.

Medication abortion, approved by the FDA for use during the first 10 weeks of pregnancy, uses two different medicines[71]: mifepristone, which interrupts the flow of the hormone progesterone that sustains the pregnancy; and misoprostol, which causes contractions. Misoprostol alone is 80 percent to 85 percent effective, and in combination with mifepristone is 95 percent effective. Medication abortion is an extremely safe way[72] to end a pregnancy in the first 12 weeks of gestation. According to the Guttmacher Institute[73], in 2017 medication abortion accounted for approximately 40 percent of all recorded abortions and 60 percent of abortions performed up to 10 weeks gestation. (The actual rate is likely higher[74] because of the growing number of people who are self-managing their

[68] https://www.feminist.org/anti-abortion-violence/images/2018-national-clinic-violence-survey.pdf

[69] https://www.guttmacher.org/article/2020/07/after-latest-supreme-court-ruling-abortion-womens-health-protection-act-more?utm_source=Guttmacher+Email+Alerts&utm_campaign=1641eec6b8-WHPA_COPY_01&utm_medium=email&utm_term=0_9ac83dc920-1641eec6b8-260690825

[70] https://msmagazine.com/2020/03/26/telemedicine-abortion-what-it-is-and-why-we-need-it-now-more-than-ever/

[71] https://www.plannedparenthood.org/learn/abortion/the-abortion-pill

[72] http://guttmacher.org/gpr/2019/05/improving-access-abortion-telehealth

[73] http://guttmacher.org/article/2019/09/medication-abortion-and-changing-abortion-landscape

[74] http://guttmacher.org/article/2019/11/self-managed-abortion-may-be-rise-probably-not-significant-driver-overall-decline

abortions[75] using medication purchased on the internet or obtained in other ways.)

With the expansion of telehealth, the growth of medication abortion has dovetailed into new opportunities for accessing abortion health care. As abortion restrictions have increased over the last several years and harassment of people entering health clinics persists — even during the COVID-19 crisis[76] — people are increasingly turning to medication abortion and telehealth to increase their safety and privacy when obtaining abortion care.

Nevertheless, numerous policy barriers limit the reach of telehealth abortion. Many states prohibit patient access to the abortion pill via telemedicine, despite its proven safety. Eighteen states[77] currently require the prescribing clinician to be physically present when prescribing the abortion pill. Thirty-three states require the clinician prescribing the abortion pill to be a physician. Neither of these requirements are necessary because the abortion pill is extremely safe and effective[78]. Another significant barrier to telemedicine abortion is that the U.S. Food and Drug Administration (FDA) restricts the distribution of mifepristone. When initially approving the drug in 2000, the FDA, under pressure from anti-abortion forces, blocked easy access to mifepristone, using their Risk Evaluation and Mitigation Strategy (REMS) — a drug safety program that allows the FDA to restrict the circulation of certain medications with serious safety concerns to help ensure the benefits of the medication outweigh its risks. Under the REMS program, mifepristone must be dispensed in person at a clinic, medical office or hospital under the supervision of a healthcare provider registered with the drug manufacturer.

However, since 2016, the organization Gynuity has operated a research study on telemedicine abortion called TelAbortion[79], which allows clinicians participating in the study to provide medication abortion care by video conference and mail

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[75] https://www.guttmacher.org/gpr/2018/10/self-managed-medication-abortion-expanding-available-options-us-abortion-care

[76] http://guttmacher.org/article/2019/11/self-managed-abortion-may-be-rise-probably-not-significant-driver-overall-decline

[77] http://guttmacher.org/state-policy/explore/medication-abortion

[78] https://pubmed.ncbi.nlm.nih.gov/28885427/

[79] http://telabortion.org/about/for-providers

without an in-person visit to the abortion provider. The study is currently running in 13 states: Hawaii, Washington, Oregon, New Mexico, Colorado, Georgia, New York, Maine, Iowa, Minnesota, Illinois, Maryland and Montana. This study has shown that telemedicine abortion is safe and effective.

In light of COVID-19 and the need for increased social distancing, advocates are increasingly challenging the FDA's REMS restrictions on the abortion pill. This effort is supported by recent research[80] on the safety of a no-test medication abortion protocol that allows doctors to screen patients by phone or video and then mail abortion pills directly to them. On March 30, 2020, a coalition of 21 state attorneys general[81] led by California Attorney General Xavier Becerra sent a strongly-worded letter[82] to the U.S. Department of Health and Human Services and its U.S. Food and Drug Administration, urging the Trump Administration to waive or use its discretion on enforcement of its REMS designation. In addition to the attorneys general letter, reproductive health groups[83] are pressuring the government to remove the REMS restriction on the abortion pill. In July of 2020, a federal judge in Maryland issued a ruling[84] temporarily suspending enforcement of an FDA restriction on abortion pills during the pandemic.

As laws, insurance changes and clinic closures have made it increasingly difficult to get an abortion, a growing movement[85] is devoted to helping pregnant people learn to self-manage an abortion. Reproductive health advocacy organizations like Aid Access[86], Plan C[87], and SASS[88] provide information and support on how to safely obtain and use abortion pills. Some states have passed laws and supported the prosecution of people who have obtained abortion pills and used them on their own. The legal advocacy organization If/When/How: Lawyering for Reproductive Justice[89] has a campaign to push for the decriminalization of

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[80] https://msmagazine.com/2020/05/13/no-test-medication-abortion-increases-safety-and-access-during-covid-19/

[81] https://msmagazine.com/2020/03/31/abortion-is-available-by-mail-in-13-states-21-attorneys-general-urge-broader-access/

[82] http://telabortion.org/about/for-providers

[83] https://msmagazine.com/2020/05/20/feminist-multi-front-battle-to-end-fdas-abortion-pill-restriction/

[84] https://msmagazine.com/2020/07/21/the-abortion-pill-mifepristone-just-became-easier-to-get/

[85] https://msmagazine.com/2020/04/01/self-managed-abortion-is-medically-very-safe-but-is-it-legally-safe/

[86] https://aidaccess.org/

[87] https://plancpills.org/

[88] https://womenhelp.org/en/page/346/women-help-women-is-about-access-information-and-activism

[89] http://ifwhenhow.org/wp-content/uploads/2020/04/20_04_Final_SMA_TheLaw_COVID-19_FactSheet_PDF.pdf

self-managed abortion, which they argue is particularly critical during the coronavirus epidemic. They also provide legal information to people with questions about self-managed abortion and their rights.

Access to safe and legal abortion is vital to women's health and well-being. In 2020, Dr. Diana Greene Foster published the results of a 10-year study on the impact that abortion — and being denied abortion — has on women. "The Turnaway Study: Ten Years, A Thousand Women, and the Consequences of Having—or Being Denied—an Abortion"[90] provides definitive evidence that abortion access strongly enhances women's health and well-being, whereas denying abortion[91] results in physical and economic harm. Since the 1973 *Roe v. Wade* decision, the constant onslaught of anti-abortion rights measures introduced throughout the country endangers women's health and forces reproductive rights and justice activists to challenge each restriction and fight the same battles repeatedly. International bodies, including the United Nations[92] and the World Health Organization[93], have recognized abortion and reproductive rights as basic human rights. Committed activists will continue to fight for a world where all people have access to safe and legal abortion care.

3. **Utah's Recent Abortion Bills**

For this study of Utah's abortion laws, we reviewed in detail the legislative paths by which three abortion bills became law and one failed. SB 234, passed in 2016, is detailed in Appendix D. SB 67, and SB 174 were passed in 2020, and HB 364 failed on the last day of the 2020 session. These are detailed in Appendices E, F and G.

2016 SB 234, Protecting Unborn Children Amendments, was sponsored by Utah State Sen. Curtis Bramble (R-16), and Utah State Rep. Keven Stratton (R-48). It requires a physician to administer anesthesia to a pregnant patient having an abortion at 20 weeks gestation or later. The bill is based on the heavily disputed belief that a fetus can feel pain at 20 weeks. It is contradictory by not requiring

[90] https://www.ansirh.org/research/turnaway-study

[91] https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf

[92] https://www.unfpa.org/publications/international-conference-population-and-development-programme-action

[93] https://www.who.int/health-topics/abortion#tab=tab_1

anesthesia if the abortion was necessary due to serious risk or death to the pregnant patient or if it is performed on a fetus that has a diagnosable and lethal defect. It does not require anesthesia if the anesthesia causes risk to the patient. The bill does not specify the type of anesthesia or how it is to be administered. This bill passed the Senate 25 Yes, 3 No and passed the House 57 Yes, 10 No. No Republican voted against it. It was signed into law on March 28, 2016.

2020 SB 67, Disposition of Fetal Remains, enacts several provisions regarding the disposition of fetal remains, including notifying the woman that she has a right to decide how to dispose of the remains and requiring the provider to provide for that disposition. The requirements apply to miscarriages as well as abortions. If the woman makes no decision within 72 hours, the healthcare provider automatically becomes the authorizing agent for the remains. The bill was sponsored by Utah State Sen. Curtis Bramble (R-16); the House sponsor was Utah State Rep. Karianne Lisonbee (R-14).

The bill was first heard in the Senate Health and Human Services Committee and was presented as a way to ensure fetal remains are treated with "dignity and respect." Sen. Bramble clarified the intent, saying that these requirements obligate the provider, not the woman. A form would be provided to the woman, who could choose the disposal method. Physicians opposing the bill expressed concerns that the bill restricts them by proscribing what, when and how they speak to their patients. Testimony from members of Pro-Life Utah and the Eagle Forum[94] supported the bill. The committee voted to pass the bill with 4 Yes and 2 No.

Bramble presented SB 67 Second Substitute to the Senate by saying that it "requires the remains of an unborn child through abortion or miscarriage to be treated with dignity." Medical facilities, he said, "have to dispose of the remains within 120 days and they can only dispose of the remains of an unborn child through cremation or burial. Simultaneous disposals can occur so that the disposal doesn't have to be one child at a time." SB 67 Second Substitute bill passed the Senate with 21 Yes, 6 No. No Republicans voted against the bill.

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94 https://le.utah.gov/av/committeeArchive.jsp?timelineID=157251 at 10 minutes 33 seconds

The bill next was heard in the House Health and Human Services Committee. Bramble related a story about a woman visiting Utah who miscarried and needed the senator's help to take the remains home for burial. Utah State Rep. Ray Ward (R-19), a physician, pointed out that current hospital practice does not include burial or cremation. The Academy of Family Physicians noted that most miscarriages produce as little as 3 or 4 tablespoons of fluid and tissue, making burial untenable, its executive director said. An amendment was added to clarify that burial is not needed for pathology tissue. The bill passed the committee by a vote of 8 Yes 3 No.

On the House floor, Lisonbee defended SB 67 as doing "simple things…parents shall have the right to choose the disposition of their fetal remains, provides for interstate transportation of fetal remains and does not apply to … cases where there is no salvageable fetal, placental or maternal tissue." Ward offered an amendment allowing disposal of fetal remains "according to the facility's usual method of disposing of biologic material if that was the woman's explicit choice." After a complicated discussion, the amendment passed with respect to miscarriages but failed with respect to abortions.

SB 67 Third Substitute as amended returned to the Senate. Because of the disagreement between the House and the Senate, a conference committee was appointed. The committee determined that it would be unconstitutional to treat miscarriage remains differently from abortion remains. A fourth substitute was approved which kept Ward's original amendment to allow the woman the choice of using the health care facility's disposal method. SB 67 Fourth Substitute was approved by the Senate by a vote of 22 Yes 6 No, and the conference committee report was approved by the House. SB 67 Fourth Substitute was signed into law by Gov. Gary Herbert on March 28, 2020.

2020 SB 174, Abortion Prohibition Amendments, is a bill prohibiting "a pregnant woman from receiving an abortion, with limited exceptions." This is perhaps the most significant abortion bill passed to date by the Utah Legislature. The bill levies a second degree felony against the person performing the abortion and penalties against the abortion clinic if applicable. SB 174's effective date is contingent upon the Legislative Counsel certifying "to the Legislative Management Committee that a court of binding authority has held that a state may prohibit the abortion of an unborn child at any time during the gestational period, subject to…exceptions…"

The exceptions[95] are the risk that the woman will die or suffer "substantial and irreversible impairment of a major bodily function;" certain lethal fetal defects; rape; rape of a child or incest. This bill thus ensures that if the Supreme Court overturns *Roe v. Wade*, elective abortions will be prohibited in Utah with the above exceptions.

SB 174 was sponsored by Sen. Dan McKay, (R-11). The House Sponsor was Rep. Karianne Lisonbee, (R-14).

The bill was first heard in the Senate Health and Human Services Committee. Testifying with Sen. McKay were his wife and Gayle Ruzicka, president of the Utah Eagle Forum. Supporting public comment included the president of Pro Life Utah, the president of Abortion Free Utah and individuals who felt that abortion amounts to taking a life that begins at conception. Testimony against included an OBGYN representing the Utah Section of American College of Obstetricians and Gynecologists, other medical personnel and the American Civil Liberties Union. Summation of the motion to pass the bill favorably out of committee included the statement that the "fetus has the same rights as the mother."

The Senate held the second reading of SB 174 two days later. Sen. McKay explained that the hope is that an Alabama bill will reach the Supreme Court and that *Roe v. Wade*, which he felt was wrongly decided, will be overturned. He says he was prodded by his "loving wife," and that social services support means that "young mothers" can raise the children they are "blessed with." A few legislators did raise the issue that rape is underreported and a police report is necessary for an abortion due to rape. It was clarified that the law would not prevent use of the "morning-after" pill. Senators speaking against the bill brought up the right of privacy, saying that government should not make choices for women. The bill passed its second reading by a vote of 21 Yes, 6 No and 2 Absent. Several senators explained their vote using terms such as "killing babies," "abomination," and "a path to escape consequences."

The third reading of SB 174 reiterated many of the same points. Sen. Kathleen Riebe, (D-8), speaking against the bill pointed out that children under 18 are being sexually assaulted and can't get contraception and said that "adoption after a

[95] https://le.utah.gov/~2020/bills/static/SB0174.html

lengthy pregnancy is not an option for everyone." The bill passed third reading with a vote of 23 Yes (all the Republicans), 6 No (all the Democrats).

SB 174 was then heard in the House Health and Human Services Committee. Sen. McKay presented the bill much as he had done in the Senate Health and Human Services Committee, along with Gayle Ruzicka again. Representatives brought up the high maternal death rate in countries which prohibit abortion, and the issue of minors getting pregnant by minors, which is not considered rape. Public testimony was very similar to that in the Senate committee, with the exception that one woman (a League of Women Voters member) testified that she had no regrets about aborting a fetus with a serious abnormality and another woman testified that her friends had abortions with no regrets. The executive director of the Eagle Forum testified that the stream of children to adopt was drying up. Rep. Ward's motion to return the bill for Interim Study failed and the bill passed the committee with a vote of 10 Yes, 3 No.

On March 12, 2020, (the last day of the session) SB 174 Rep. Lisonbee presented the bill on the House floor. She said she believes the Legislature needs to come out and say that life begins at conception. Rep. Suzanne Harrison, (D-32), a physician, called it an extreme bill and said that it will kill people but won't eliminate abortions. A motion to change the penalty to an infraction failed, as did one to eliminate the requirement that a police report must verify rape. The bill passed by a vote of 51 Yes, 21 No (6 Republicans joined Democrats) and 3 Absent. The bill was signed by the governor on March 28, 2020.

2020 HB 364, Abortion Revisions, is a bill that requires a woman seeking an abortion to undergo an ultrasound and that her physician must make the heartbeat audible and describe images of the fetus. The bill was sponsored by Rep. Stephen Christiansen, (R-47). Reps. Cheryl Acton (R-43), Lisonbee, Adam Robertson (R-63), Travis Seegmiller (R-62) and Lowry Snow (R-74) were co-sponsors. Sen. Bramble was the Senate sponsor.

The bill was first heard in the House Judiciary Committee. It was presented as an Informed Consent bill, intended to make sure the woman requesting an abortion had all the information available to her so that she did not later have remorse or other effects leading to mental health issues. Testifying for the bill were Pro-Life Utah with personal testimony that an abortion with no information caused much

pain and grief over the years. The ACLU and Planned Parenthood testified against saying it is medically unnecessary and adds a burden to a difficult decision. The bill passed the committee with a vote of 6 Yes 5 No.

The House then heard the amended Fourth Substitute which stipulated that a licensed mental health professional assert that the information provided to the woman not cause serious mental or physical harm. The debate included emotional and unsubstantiated testimony by Rep. Steve Christiansen (R-47), who said there are "significant health risks to woman if she chooses abortion," an allegation the Turnaway Study disputes[96]. He also characterized the fetus as a "tiny little baby with arms and legs...and a tiny beating heart." SB 364 passed the House 47 Yes, 20 No (5 Republicans voted No).

The bill next was heard in the Senate Health and Human Services Committee. Rep. Christiansen presented the Fifth Substitute which ensured that the woman would have to make only one trip to the doctor and that a transabdominal ultrasound would meet the requirement at any stage of pregnancy, relieving the concern about a transvaginal ultrasound. He again stated incorrectly that there were more risks to abortion than birth. Pro-Life Utah testified in favor; the ACLU testified against as being unconstitutional by compelling speech by a physician.

The bill was presented in the Senate by Sen. Bramble. Sen. Diedre Henderson (R-7) proposed Amendment 2 which prohibited a transvaginal ultrasound. This amendment passed. Sen. Todd Weiler (R-23) pointed out that the bill was probably unconstitutional and would cost the state money if a lawsuit were brought. Sen. Lyle Hillyard (R-25) agreed, as did Sen. Daniel Thatcher (R-12). HB 364, Fifth Substitute as amended passed the Senate 16 Yes 7 No (5 Republicans voted No). *NOTE:* All of the women senators left the floor in protest before the vote.[97]

Because the bill had been amended, it was brought back to the House at 7:25 p.m. on the last day of the session for the House to concur with the amendments. Rep. Lee Perry (R-29) moved to circle (put the bill on hold) and Rep. Ward pointed out two requirements in the bill that were mutually exclusive: lines 161-164 say the physician "shall" display images of the fetus but "may" not use a

[96] https://www.ansirh.org/sites/default/files/publications/files/turnaway_study_brief_web.pdf
[97] https://www.sltrib.com/news/politics/2020/03/11/every-woman-utah-senate/

transvaginal ultrasound." At weeks 4-7 "you cannot do both of those things … the language as it is written now, it's simply not possible.[98]" The vote to circle passed by a vote of 41 Yes, 32 No. The bill was never uncircled and was Filed for Bills Not Passed.

4. How Providers Comply with Abortion Legislation

The study committee met with two physicians from the University of Utah to understand how Utah's medical providers comply with Utah abortion legislation. Dr. David Turok, MD, MPH, is associate professor and Dr. Jessica Sanders, PhD, MSPH, is adjunct assistant professor, Family and Preventative Medicine and assistant professor, in the University of Utah Department of Obstetrics and Gynecology. The two expressed their opinions and experiences in the following narrative.

Study Committee: Kathy Biele, Angelina Beitia, Tina Hose, Nickie Nelson, Vickie Samuelson

Question: What happens when a woman requests an abortion?

Most women in Utah call Planned Parenthood or the Wasatch Women's Clinic, but they may also go to their private physician. The woman must complete a state-mandated online information module [99]provided by the state. Some statements in this module are not scientifically accurate. Adoption and the state preference for childbirth should not be part of a medical informed consent. The patient must also undergo a counseling session from a provider online or in person who will read from a state-provided script. The patient must sign a state-provided form saying she has received this information. Then she must wait for 72 hours before visiting the abortion provider. Blood tests will be done, primarily to check for anemia, and a health history taken. An ultrasound will be done before the abortion. The patient may choose whether to view the ultrasound.

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98 https://le.utah.gov/av/floorArchive.jsp?markerID=111916 at 22 minutes 35 seconds

99 https://informedconsent.health.utah.gov

The state-mandated 72-hour waiting period is very inconvenient for the woman. It may require additional travel, extra money, childcare arrangements, time off from work, and the stigma of having to inform people she may not wish to inform. Note that public insurance does not pay for abortions.

If the patient and the abortion provider decide upon a medication abortion (at 10 weeks or less), the patient will be given a mifepristone pill and a misoprostol vaginal insert to use the following day. The mifepristone prevents the pregnancy from advancing further and the misoprostol prompts the uterus to expel the contents. This procedure is NOT reversible if only the mifepristone is taken. About half of women choose this method at under 10 weeks.

An aspiration abortion is an outpatient procedure. and usually takes less than five minutes, with oral pain medication and a local anesthetic. If over 15 weeks, the standard of care is intravenous sedation of Fentanyl and/or Versed, which meets the state law that the fetus receive pain medication.

The abortion provider documents the procedure and signs a form as required by state law. Providers are accredited by Planned Parenthood and the National Abortion Federation. There are also scheduled and drop-by state audits every year.

Most Utah abortions are performed at the Planned Parenthood Metro Clinic. The woman will receive 30-45 minutes of counseling from a clinic assistant. She must sign a standard medical informed consent form, as would be done for any medical procedure. Ninety percent of abortions are done at a fetal age of less than 13 weeks. Only 1 percent of abortions are done at more than 20 weeks. Most women requesting abortions already have at least one child.

Question: How do new doctors learn what is required in Utah?

This is a challenge because the laws are always changing. In their second year of medical school, students have four hours of Reproductive Rights content covering family planning, contraception and abortion. A Ryan Residency[100] gives OBGYN residents training in abortion care. Midwives may receive some instruction if they

[100] https://intranet.bixbycenter.ucsf.edu/training/training/kenneth_j_ryan_training.html

wish. OBGYN residents get 12 weeks of training. The University has a two-year fellowship in Family Planning. Every scenario is different and must be checked against Utah code. For example, does a fetus needing multiple surgical procedures, each with a 50 percent fetal mortality, meet the code language allowing abortion if the fetus has a defect that is uniformly diagnosable and uniformly lethal? Some code may be purposely vague to leave the decision up to the physician.

Question: Do the restrictions placed on abortion by the state cause women to reconsider their choice?

Probably not. The restrictions may stigmatize their decision. The mandates certainly make it more difficult and more costly. Most women already have considered this very seriously and have reached "decisional certainty." Studies have shown that less than 5 percent of women regret their decision to have an abortion (this may be less than those who regret having a child). The book[101] "The Turnaway Study: Ten Years, a Thousand Women, and the Consequences of Having—or Being Denied—an Abortion," by Diana Green Foster discusses this. State mandates don't change minds.

Question: What can be done to loosen abortion restrictions placed on women by the Legislature?

Most legislators are not well informed about a woman's circumstances that make her choose abortion. These circumstances include economic reasons as well as the difficulties of parenting. Legislators have an unrealistic perspective and do not think of abortion as an established medical procedure. They seem to be thinking of providers who are not legitimate. Legislators lack knowledge of existing procedures. For example, when he proposed HB 364, Rep. Steve Christiansen (R-47) was unaware that an ultrasound is always done before an abortion, and providers already ask if the woman wants to see the fetus or listen to the heartbeat. The bill failed.

Personal stories are important. Women from Abortion-Free Utah, ProLife Utah and the Eagle Forum testify about regrets from abortions. They may have been

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https://www.kingsenglish.com/event/tke-presents-online-diana-greene-foster-turnaway-studyten-years-thousand-women-and

subject to coercive practices from society or lack of information; we are trying to allow women to make their own decisions in a safe and supportive environment. Few women testify that they do not regret having an abortion and that their lives, and their families' lives, were successful after an abortion. Their testimony is not well received in the legislative committees. Public polls[102] show that a majority of Utahns do not want additional abortion restrictions.

While legislators express concern about the unborn but, they express less concern about the life of the woman. The laws bully women who want an abortion and create a stigma around a procedure which should be considered health care. This is not a subject that should be politicized.

In a pluralistic society, there is always a tension of opposites (two things can be true at the same time) when individuals have autonomy. We need to create a "safe space" where abortion can be discussed in small groups without stigma. A democracy needs to accommodate a wide range of opinions and decisions. The best decision will be made by the pregnant woman and her doctor. Legislators disregard concerns of the pregnant woman. While the stated goal is preservation of life, they pass up other life-saving opportunities involving gun deaths, unsafe environments, health care and education and work opportunities.

It's important to acknowledge that people have strong feelings about unborn life, but it is also important to consider the life and potential of a fully formed, living woman. It is imperative that people make their own decisions even when considering how a human being is created. It is challenging to think critically and empathetically at the same time.

5. Challenges Facing Planned Parenthood of Utah

The study committee met with Planned Parenthood of Utah's Karrie Galloway, president and C.E.O., and Annabel Scheinberg, vice president, Learning and Partnerships, via Zoom on 19 November 2020. The conversation was wide-ranging.

[102] https://www.plannedparenthood.org/planned-parenthood-utah/polling

Planned Parenthood was suppportive of the League study on Utah abortion laws as funding denials and perennial changes in existing laws have increased in Utah, making the organization's ability to provide needed services difficult. Laws are confusing to the public and sometimes contradictory. Utah is not unique; other states do this also.

Planned Parenthood[103] has eight health centers in Utah; they are a service provider as well as an advocate. Metro Center (160 S. 1000 East) is the only one that provides abortions. (Wasatch Women's Center[104] provides first-trimester abortions). They provide the state-required "consent class," including the required "somewhat patronizing" state video before the state-mandated 72-hour waiting period. Fortunately, the class can be provided via telemedicine. No funding is provided for any state mandates, and the restrictions make it harder to do their work.

Karrie Galloway joined PP in 1981. That year, Utah passed a law that minors could not be given information about contraception or abortion using state money without parental consent. Planned Parenthood sued and Ms. Galloway said it seems as though Planned Parenthood has been in court since then, fighting for access to contraception. The Planned Parenthood board of directors continues to work tirelessly with lawyers to stand up for women. Until last year when Title X money was taken away, Planned Parenthood was a steward of federal money to make sure that rights to family planning, sex education and even state contracts for public health were available in Utah.

In 2019, Rep. Cheryl Acton's HB 136 passed, prohibiting abortion after 18 weeks. Planned Parenthood moved to enjoin this bill at the Circuit Court level and then the state requested a hold due to the "June Medical"[105] (*June Medical Services LLC v. Russo*) case, which held that a class action suit could not be brought. That case was struck down by the U.S. Supreme Court. Now the case against the 18-week bill is back in play.

Rep. Karianne Lisonbee's bill prohibiting abortion of a fetus with Down Syndrome also passed. This is not seen as constitutional and is being challenged in court in

[103] https://www.plannedparenthood.org/planned-parenthood-utah
[104] http://wasatchwomenscenter.net/
[105] https://www.supremecourt.gov/opinions/19pdf/18-1323_c07d.pdf

other states. Note that Georgia passed a law banning abortion after six weeks in 2019; previously the Supreme Court has upheld the part of *Roe v. Wade* that says it is not constitutional to ban abortion pre-viability.

Planned Parenthood of Utah provides about 2,200 abortions per year, a lower rate than other states. They also provide low- to no-cost contraception which, of course, helps to prevent abortions. Their patients are low-income women often with no insurance. Before Obamacare (the Affordable Care Act), only 3 percent of their patients had insurance; now it is about 23 percent.

Title X funding[106] is prohibited if an organization even says the word "abortion." The American College of Obstetricians and Gynecologists and the National Family Planning and Reproductive Health Association are suing Health and Human Services over this restriction.

Planned Parenthood Association of Utah and other affiliates have had to change their business models to accommodate this restriction and provide contraception, but it is still very costly. Planned Parenthood Federation of America together with its affiliates from Wisconsin, Utah and Ohio filed a lawsuit about changes to the Title X program.

Planned Parenthood of Utah often partners with the national organization or the ACLU on lawsuits. The national organization provides lawyers, but costs are difficult to determine. Planned Parenthood of Utah has never lost a lawsuit or had to pay any legal advice. The state spent about $80,000 for expert witnesses on the 18-week case. If that case settles and Planned Parenthood of Utah wins, the state will owe the Utah organization about $200,000. Planned Parenthood Utah also had to sue the governor when its health care contracts were cancelled. This would have cost about $200,000, but the lawyers' hours were heavily discounted. Still, lawsuits cost staff time. Planned Parenthood and ACLU lawyers fight these cases in many states and are familiar with winning arguments, so that helps.

Currently there is a backlog of abortion lawsuits. One is being heard by the U.S. Supreme Court, with six more pending certification by SCOTUS. At least 18 are pending in courts of appeal. Sen. Dan McKay's 2020 bill is a trigger bill which

[106] https://www.plannedparenthoodaction.org/issues/health-care-equity/title-x

would prohibit all abortions (except in cases of rape, incest or women's health) and levy felony penalties on providers in Utah if *Roe v. Wade* is not upheld.

Until 2015, Planned Parenthood and the Legislature peacefully coexisted to make sure women had the care they needed. Then, doctored videos appeared insinuating that Planned Parenthood sold body parts. PP successfully sued[107] the state, but now must continue to fight for women who need care.

It is not easy, given the incendiary narrative surrounding the issue. For instance, abortion opponents state falsely that Planned Parenthood promotes risky sexual behaviors to minors, has a history of covering up sexual abuse and aids sexual abusers, covers up sex trafficking, and supports discriminatory and racially targeted abortions. The University of California at Los Angeles conducted an in-depth study ("The Attack on Planned Parenthood: A Historical Analysis") of the history of attacks on Planned Parenthood[108].

Sen. Curtis Bramble is perhaps the most active legislator bringing bills to restrict abortion. Other legislators active in Targeted Restrictions on Abortion Providers (TRAP) laws are Reps. Karianne Lisonbee, Cheryl Acton and Steve Christiansen. Rep. Christiansen's bill requiring a second ultrasound may return in 2021. View Pro-Life Utah's scorecard [109] here.

Fortunately for health care providers, the Legislature does not micromanage how the laws are carried out. Also, Planned Parenthood has a good relationship with the Department of Health and Office of Education, which works with Planned Parenthood to make the requirements less onerous for the woman. For example, Planned Parenthood streamlines the process, ensuring that the woman is not burdened with unnecessary paperwork. The requirement that the woman must make a decision about the fetal remains is part of the normal procedure during the class and video. (That law SB 67 is based on an Indiana law).

All fetal tissue must be sent to a laboratory (a Bramble law) to determine if the fetus had Down Syndrome. At that point, the woman is asked if she wants the

[107] http://ppacutah.org/lawsuits/
[108] https://escholarship.org/content/qt38f952g1/qt38f952g1.pdf?t=mlqq44
[109] http://prolifeutah.org/news/score-card.cfm

normal procedure of disposing of the remains or if she wants to do something else with the remains.

Public opinion is crucial in the battle to make abortion safe and legal. Focus groups from Dan Jones & Associates in early 2020 showed that more than 80 percent of [110]Utahns said there are enough restrictions on abortion, and showed support for *Roe v. Wade*. Arguments in favor of allowing abortions include recognizing that the woman has agency which the fetus does not. Most women who have abortions are in fact mothers already, and the decision to abort should be both personal and private. The question is "how we can lead with values and talk about topics like agency and empathy," Ms. Galloway said. "People's personal decisions are theirs and they deserve a chance to reach their potential. It is not government's role to interfere in this decision."

The Federalist Society[111] has been very successful in playing the long game to change public opinion. To be that successful, advocates must be single-minded and keep an eye on the courts. They must promote contraception as a way to prevent abortions. Testimony should consider a woman's life in its entirety rather than depending on individual testimonies focused on regrets.

Ms. Galloway believes that the Title X case may be the most significant in that women's rights were not protected as they were in the past. "Watching them argue this case - it was so devastating for people who had always relied on that court to protect rights. No more. No more at all. We cannot rely on the courts. We have to try to stop it along the way."

Women will continue having abortions as they always have, but will be facing unsafe conditions, Ms. Sheiberg said.

Planned Parenthood Federation of America is conducting a strategic planning effort to address the public health emergency of abortion access. One public facing resource provided is the Abortion Care Finder[112]. Planned Parenthood and other organizations have a long-term plan called The Future of Abortion Care.[113] Rocky Mountain Planned Parenthood will provide abortion up to 24 weeks, and

[110] https://www.plannedparenthood.org/planned-parenthood-utah/polling
[111] https://fedsoc.org/about-us
[112] https://www.plannedparenthood.org/abortion-access?
[113] https://www.plannedparenthoodaction.org/issues/abortion

other clinics in Colorado or New Mexico could provide care for Utah women if abortion is outlawed in the state.

Planned Parenthood Utah and the University of Utah have collaborated with the author of the book "The Turnaway Study"[114], which examines the effects of unintended pregnancy on women's lives.

The League of Women Voters can help by testifying about all the care that PP provides and the breadth of a woman's life experience. Find out what will happen in our state if Roe is overturned, here[115]. A future webinar could concentrate on Family Planning, contraception to prevent abortions, and abortion as part of comprehensive women's health care.

6. Summary and Conclusions

Utahns can expect many more bills adding abortion restrictions in future legislative sessions. Abortion opponents are hoping that a more conservative Supreme Court will overturn or at least further restrict *Roe v. Wade*, which it has not done thus far[116]. The goal of opponents is to prohibit abortions in Utah except for rape, incest or serious risk to the mother. Legislators in Utah do not seem inclined to remove these exceptions although other states (Alabama, Louisiana, Mississippi and Ohio) have proposed near total bans that exclude rape and/or incest[117]. Sen. Bramble and Reps. Lisonbee, Acton and Christiansen were very active anti-abortion legislators in 2020.

Anti-abortion public testimony in committees is led by three organizations — Pro-Life Utah[118], Abortion-Free Utah[119] and the Utah Eagle Forum[120]. Repetitive personal experiences are recounted of either long-term regret and mental illness

[114] https://turnawaystudy.com/the-book/

[115] https://www.plannedparenthoodaction.org/issues/abortion

[116] https://www.dw.com/en/us-supreme-court-strikes-down-strict-abortion-law-in-major-ruling/a-53987943

[117] https://www.guttmacher.org/state-policy/explore/abortion-policy-absence-roe

[118] http://www.prolifeutah.org/

[119] https://abortionfreeutah.org/#!/home/main

[120] https://www.utaheagleforum.org/#/

from having had an abortion or gratefulness that a woman chose to have her child. Statements that have been repeatedly proven untrue, such as that abortion is medically riskier than birth, go unchallenged by legislators.

Testimony against abortion restrictions is led by Planned Parenthood Utah and the ACLU. Physicians often testify in person or as representatives of medical groups. Legislators generally ignore these legal and medical experts, except when a bill is found to be unconstitutional. Conservative senators such as Hillyard, Thatcher and Weiler often bring up costs to the state of losing lawsuits over unconstitutional laws. Rep. Ward, a physician, is skilled at finding ways to modify bills that satisfy anti-abortionists but do not compromise medical care. Democratic legislators almost always oppose abortion restriction bills, but this is not an issue they prioritize.

What can be done to protect a woman's right to private health care which includes abortion, without government intervention? Individuals and organizations, such as the League of Women Voters of Utah, will stand up for the health care privacy of a woman who becomes pregnant. "Every U.S. resident should have access to affordable, quality health care, including birth control and the privacy to make reproductive choices," the League of Women Voters of U.S. says.

Somehow, although Utah legislators oppose government restrictions on "rights" such as requiring masks in a pandemic, this opposition disappears when it comes to a pregnant woman. Fetal "rights" beginning at or before conception seem to outweigh those of women. Some legislators are willing to force physicians to tell their patients things that are not true and to force women to undergo unnecessary physical procedures to protect a fetus[121]. Is this the role of government in Utah?

These same legislators often vote against healthcare and education funding that protects children. Testimony should emphasize such contradictions and call out legislation that is pro-birth rather than pro-life.

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https://www.vice.com/en/article/nz88gx/a-state-by-state-list-of-the-lies-abortion-doctors-are-forced-to-tell-women

Because personal testimony seems to be important in legislative committees, testimony of women who had an abortion and have no regrets might be very powerful. Surrendering privacy asks a lot of a woman, and community support would be critical. Abortion opponents can be threatening.

Many statements are made in public testimony that are factually not true, such as that abortion is medically riskier than birth, or that a majority of women regret their abortions. The book "The Turnaway Study"[122] by Dr. Diana Greene Foster, which was published during this study, will be very useful in providing statistics rather than anecdotal stories to legislators.

In conclusion, Utah legislators continue to propose laws that increase government intrusion upon a woman's right to privacy in her reproductive health care decisions. The League of Women Voters of Utah hopes this study provides information and methods for those who wish to oppose this legislation. As stated in the introduction, this study provides background and pertinent material for League members and others to use as they participate in discussions about a woman's right to have an abortion.

[122] https://www.ansirh.org/research/turnaway-study

Abortion Bills In Utah 1973-2020

YEAR	Total # Bills	Passed	Failed	LEGISLATORS
1973	2	1	1	Stanford/Reevs
1974	2	1	1	Urie/Delmont/Judd/Davis/Harvey
1977	2	1	1	No record
1978	2		2	Selleneit/Harrison
1979	2		2	Delmont/Judd/Livingston/Sykes
1980				None
1981	5	2	3	Snow/Asay/Snow/Bangerter/Sykes
1982	1	1		Sykes
1983	2	2		Sykes/no record
1984	3		3	No record
1985	2	1	1	Overson/Moss
1986	2		2	Selleneit
1987	1		2	Tate
1988	1	1		No record
1989	1		1	Karras
1990-96	21			No information
1997	1	1		Killpack
1998-99				No bills
2000	2		2	Way/Throckmorton
2003	2		2	Thompson/Buttars/Philpot/Morgan/Wright
2004	6	2	4	Allen/Bramble/Philpot
2006	2	1	1	Ray/Bramble/Gibson/Peterson
2007	2		2	Ray/Bramble/Gibson/Peterson
2009	3	3		Wimmer/Buttars/Sumsion/Madsen/Ray/Bramble
2010	3	3		Wimmer/Dayton
2011	3	3		Wimmer/Dayton/Buttars/Stuart
2012	1	1		Eliason/Bramble
2013	1	1		Dayton/Grover
2014	1	1		Harper/Ray
2016	2	1	1	Bramble/Stratton/Oda
2017	1	1		Bramble/Stratton
2018	2	1	1	Lisonbee/Bramble/Weiler/Stratton
2019	3	3		Lisonbee/Bramble/Acton/Henderson/Dunnigan
2020	11	7	4	Dailey-Provost/Bramble/Lisonbee/Kitchen/Eliason/Moss/Ipson/Ward/Vickers/Daw/Christiansen/Acton/Brammer/Robertson/Seegmiller/Snow/McKay/Gibson/Henderson/Dunnigan/Last/Stevenson
TOTAL	95	39	36	

From 2004-20 Sen. Bramble sponsored or co-sponsored 10 bills

From 2006-14 Rep. Paul Ray sponsored or co-sponsored 4 bills

All other legislators were responsible for 3 or fewer bills each

One bill vetoed in 2010 by Gov. Herbert - HB12, Wimmer – "Criminal Homicide and Abortion Amendments." Wimmer returned and passed HB462, "Criminal Homicide and Abortion Revisions"