

ABORTION IN THE UNITED STATES – PROTECTING AND EXPANDING ACCESS

by
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A capstone project submitted to Johns Hopkins University in conformity with the requirements for the degree of Master of Arts in Public Management

Baltimore, Maryland
December 2019

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Abstract

Access to abortion in the United States is becoming increasingly determined by the state legislatures. Restrictive abortion laws at the state level that impose onerous requirements on providers and restrict women and girls' access to the procedure have been on the rise. The 2019 state legislative session saw an unprecedented level of such laws being passed by state lawmakers committed to restricting access, some attempting to criminalize abortion at 6 weeks of gestation when most women wouldn't even have learnt of their pregnancy. Much of the activity at the state level seems to be a concerted effort to bring the abortion issue back to the Supreme Court, attempting to challenge the legal status of abortion at the federal level. With Justice Kavanaugh's confirmation, the court has a strong conservative majority which has the potential to have a lasting impact on abortion access in the United States. Research shows that abortion is a routine medical procedure, and restricting legal access only results in an increase in unsafe/illegal procedures. Coercing women to continue an unintended pregnancy to term by limiting abortion access results in a negative impact on their lives, and a high cost to the taxpayers when such unintended births are publicly funded.

Sen. Susan Collins (R-ME) was a key vote in Justice Kavanaugh's confirmation, and a change in the legal landscape for abortion resulting from Justice Kavanaugh's actions on the Supreme Court is likely to be politically damaging to the Senator. Introducing and sponsoring a legislation in the Senate that protects and expands access by eliminating restrictions, and thereby incentivizing the private and nonprofit infrastructure to scale up services could be a pivotal policy action ahead of the 2020 elections.

Advisor: Professor Paul Weinstein

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Memorandum

To: Senator Susan Collins (R-ME)

From: Anand Cerillo Sharma

Date: 10 September 2019

Action Forcing Event

US District Judge Howard Sachs blocked sections of Missouri's Abortion Law, "Missouri Stands for the Unborn Act", that would have banned abortions at 8 weeks¹. However, the law includes a reason ban which would go into effect and "prohibit women from terminating pregnancies based solely on race, sex or a prenatal diagnosis, test, or screening indicating Down Syndrome or the potential of Down Syndrome". This ruling comes after similar rulings from two other federal judges that blocked restrictions in Arkansas and Ohio, two states that were part of several republican states this year that that passed laws restricting abortion access².

1 Matt Clibanoff, "Missouri Bans Abortion Based on Indication of Down Syndrome | Law & Crime," August 28, 2019, <https://lawandcrime.com/high-profile/despite-judge-halting-portion-of-missouri-abortion-law-other-restrictions-go-into-effect/>.

2 Caroline Kelly and Tammy Kupperman, "Judge Blocks Missouri 8-Week Abortion Ban - CNNPolitics," accessed September 16, 2019, <https://www.cnn.com/2019/08/27/politics/abortion-8-week-ban-missouri/index.html>.

Statement of the Problem

Abortion, a medical procedure that allows women to terminate an unintended pregnancy, is becoming increasingly hard to access in parts of the country due to the actions of state legislatures. In the United States where nearly half of the pregnancies are unintended³, access to this procedure is the only option for women to escape the negative consequences that follow an unintended birth. An unintended pregnancy early in life (teenage or early twenties) makes it likely to have subsequent unintended births later in life and permanently alter the woman's life course trajectory⁴. Even if the woman is in a cohabiting relationship that can provide support in raising the child, the couple has a higher likelihood of dissolving the relationship after birth from an unintended pregnancy compared to other couples⁵. There is also a consistently higher concentration of repeat unintended births in the most socially and economically disadvantaged groups, adding to the structural disadvantages that already exist for women from such groups⁶.

The outcomes for children born out of an unintended pregnancy have been found to be significantly poor compared to other children. These children have a higher likelihood of poor physical and mental health and lower levels of educational achievements⁷. In a European study, it has been found that the psychosocial differences in development between children from unintended births and children from intended births widen as they grow older, with a decline in such differences occurring at

3 Finer, Lawrence B., and Mia R. Zolna. "Unintended Pregnancy in the United States: Incidence and Disparities, 2006." *Contraception* 84, no. 5 (November 1, 2011): 478–85. <https://doi.org/10.1016/j.contraception.2011.07.013>.

4 Sowmya Rajan et al., "Trajectories of Unintended Fertility," *Population Research and Policy Review* 36, no. 6 (December 2017): 903–28, <http://search.ebscohost.com/login.aspx?direct=true&db=eoh&AN=1682276&site=ehost-live&scope=site>.

5 Lawrence L. Wu and Kelly Musick, "Stability of Marital and Cohabiting Unions Following a First Birth," *Population Research and Policy Review* 27, no. 6 (December 2008): 713–27, <http://search.ebscohost.com/login.aspx?direct=true&db=eoh&AN=1017503&site=ehost-live&scope=site>.

6 Rajan et al., "Trajectories of Unintended Fertility."

7 Logan, Cassandra, D. Ph, Emily Holcombe, Jennifer S. Manlove, and Suzanne Ryan. "The Consequences of Unintended Childbearing," 2007

around 30 years of age⁸. The former had a higher chance of being overweight by age 9, and have a significantly higher likelihood of being treated for psychiatric issues during their lifetime⁸.

Despite the Supreme Court's 1973 landmark ruling that settled the constitutionality of abortion (*Roe vs Wade*), a number of Republican Politicians have been vocal portraying abortion as sinful and immoral. Legislators in conservative states have been passing legislation to restrict abortion and define parameters when it would be legal, despite these laws being against *Roe vs Wade*. In 2019, 9 states have passed laws to ban abortion or place limits on the gestational age during pregnancy until which abortion can be provided⁹. Alabama's bill was the strictest, banning abortion in all cases except when the woman's life or health is at risk. All laws go against *Roe vs Wade*, which permits abortions until viability, referring to the ability of the fetus to survive outside the womb and generally occurring between 24-28 weeks of gestation.

The passage of such laws at the state level is not a new phenomenon, though the volume of such legislation that was introduced and passed in 2019 state legislative sessions was certainly notable and unusual. Legislation passed after the *Roe vs Wade* ruling that restricted abortion through indirect means, such as limited public funding for abortion, forceful parental notification in case of teenagers seeking abortion, and banning certain procedures, has resulted in women being forced to carry an unwanted pregnancy to term if they are unwilling to risk having an illegal procedure¹⁰. Some experts have labeled the government's role in restricting abortion as reproductive coercion¹¹. Even though abortion is the most common obstetrical surgical procedure, the number of providers and clinics that

8 Henry P. David, "Born Unwanted, 35 Years Later: The Prague Study," *Reproductive Health Matters* 14, no. 27 (2006): 181–90, <https://www.jstor.org/stable/3775864>.

9 Mara Gordon and Alyson Hurt, "Early Abortion Bans: Which States Have Passed Them?," *NPR.org*, June 5, 2019, <https://www.npr.org/sections/health-shots/2019/06/05/729753903/early-abortion-bans-which-states-have-passed-them>.

10 Marlene Gerber Fried, "Abortion in the United States: Barriers to Access," *Health and Human Rights* 4, no. 2 (2000): 174–94, <https://doi.org/10.2307/4065200>.

11 Ikram Junaidi, "Healthcare Providers Don't Know Abortion Is Not Illegal," *Dawn*, December 6, 2018, <https://www.dawn.com/news/1449689>.

provide this service has been steadily declining since the 1980s¹². Six states – ND, SD, MO, KY, WV, and MS have only one clinic left in each state, with Missouri’s only clinic being in danger of shutting down¹³.

Amnesty International, American College of Obstetrics and Gynecology (ACOG), and the World Health Organization (WHO) view abortion as a health care issue and have opined that limiting abortions does more to hurt women than preventing abortions from happening¹⁴. These organizations indicate that a shift is likely to occur from safe to unsafe/illegal abortions if laws are passed to limit access. For example, restrictions on teenagers seeking abortion (such as forced parental notification), could result in increasing gestational age when abortion is ultimately sought¹⁵. An abortion procedure late into the pregnancy can not only be more medically complex, but also dangerous if the teenager accesses this through illegal channels. If the pregnancy is continued to term, it results in the teenager bearing an unwanted child that she is unprepared to care for- physically, emotionally and financially. Even for older women, diminishing access to abortions in states like Texas has been associated with increased trends of self-inducing abortion as well as an increase in second trimester abortions due to a delay in accessing services¹⁶.

A 2017 study predicted that if the abortion rate as measured in 2008 were to continue, 30% of all American women are likely to have an abortion by the time they reach 45 years of age, and that the harm from illegal abortions is disproportionately higher among poor women¹⁷. Despite such evidence, conservative state law-makers continue to use rhetoric that demonizes abortion and perpetuate stigma towards women who seek it, in addition to taking policy action to restrict abortion access. Should the

12 Fried, "Abortion in the United States."

13 Holly Yan, "These 6 States Have Only 1 Abortion Clinic Left. Missouri Could Become the First with Zero," CNN, accessed October 7, 2019, <https://www.cnn.com/2019/05/29/health/six-states-with-1-abortion-clinic-map-trnd/index.html>.

14 Maggie Fox, "Decoder: Why Abortion Is More than a Political Debate," News-Decoder (blog), July 3, 2019, <https://news-decoder.com/2019/07/03/decoder-abortion/>.

15 Willard Cates, "Adolescent Abortions in the United States," *Journal of Adolescent Health Care* 1, no. 1 (September 1, 1980): 18–25, [https://doi.org/10.1016/S0197-0070\(80\)80004-0](https://doi.org/10.1016/S0197-0070(80)80004-0).

16 Daniel Grossman et al., "The Public Health Threat of Anti-Abortion Legislation," *Contraception* 89, no. 2 (February 2014): 73–74, <https://doi.org/10.1016/j.contraception.2013.10.012>.

17 Rachel K. Jones and Jenna Jerman, "Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014," *American Journal of Public Health* 107, no. 12 (October 19, 2017): 1904–9, <https://doi.org/10.2105/AJPH.2017.304042>.

recent wave of state-level anti-abortion legislation be upheld by the new Supreme Court in 2020, it will result in a devastating impact on the health and lives of American women.

History and Background

Abortion was not always a controversial or politicized issue that it has become today. According to one historical account, abortion was frequently practiced in North America in the 1800s, including in tribal societies where herbal concoctions were used to induce abortion¹⁸. Some historians claim that abortion was an “uncontroversial issue” up until the first quarter of the 19th century¹⁹. Fetuses were not considered living beings until “quickening” (when the woman felt the fetal movement), and terminating a pregnancy was entirely the woman’s prerogative until that point. Even the Catholic church, one of the most prominent anti-abortion voices of today, was not against abortion during this time²⁰. It was only when the American Medical Association (AMA) called on states to criminalize abortion in the 1860s did the Catholic Church reverse its centuries old position of being tolerant of abortion and became a vehement opponent²¹.

The AMA’s efforts to restrict abortions are said to stem out of Physicians’ desire for professional power, controlling medical practice, and limiting competition²². In 1873, Congress passed the Comstock Law that included a ban on drugs that induced abortion. By 1880, most states had passed laws criminalizing abortions, except for what was termed as “therapeutic reasons”, which were left to the discretion of the medical practitioner²³. What this meant was

18 Z. Acevedo, “Abortion in Early America,” *Women & Health* 4, no. 2 (1979): 159–67, https://doi.org/10.1300/J013v04n02_05.

19 Sarah Handley-Cousins, “Abortion in the Civil War Era,” *National Museum of Civil War Medicine*, February 9, 2016, <http://www.civilwarmed.org/abortion1/>.

20 Ignacio Castuera, “A Social History of Christian Thought on Abortion: Ambiguity vs. Certainty in Moral Debate,” *American Journal of Economics and Sociology* 76, no. 1 (January 2017): 121–227, <https://doi.org/10.1111/%28ISSN%291536-7150/issues>.

21 Castuera.

22 Jessica Ravitz, “The Surprising History of Abortion in the U.S.,” *CNN*, accessed October 9, 2019, <https://www.cnn.com/2016/06/23/health/abortion-history-in-united-states/index.html>.

23 Irin Carmon, “A Brief History of Abortion Law in America,” *BillMoyers.Com* (blog), November 14, 2017, <https://billmoyers.com/story/history-of-abortion-law-america/>.

that the women with financial means to get an abortion had access to a safe procedure, and those without the means did not. The legislation criminalizing abortion did not prevent abortions from occurring, but instead led women to seek out illegal procedures. Estimates for illegal abortion in the 1950s and 1960s range from 200,000 to 1.2 Million per year²⁴.

Supreme Court's ruling on cases surrounding the rights of couples to freely choose the use of contraception - *Griswold v Connecticut* (1965), *Eisenstadt v Baird* (1972), set the stage for a larger legal battle around abortion. The court based these decisions on the right to privacy, which it believed was implied in the constitution.

In 1972, Jane Roe, an anonymous woman from Texas, challenged the state's statute that disallowed abortions except for when the woman's life was at risk²⁵. Roe was unmarried and wanted to terminate her pregnancy legally and safely. The state law was ruled unconstitutional by a three judge panel of a Texas district court, and the supreme court agreed to take it up. In their monumental ruling in 1973, the Supreme Court upheld the constitutional right to privacy that allowed women to have an abortion, within certain parameters. The court allowed states to prohibit abortion after viability, except when an abortion was necessary to protect the woman's health or life. Viability is defined as the ability of the fetus to have a prolonged life outside the mother's womb, usually occurring between 24-28 weeks of the pregnancy²⁶. The

24 Rachel Benson Gold, "Lessons from Before Roe: Will Past Be Prologue?," Guttmacher Institute, September 22, 2004, <https://www.guttmacher.org/gpr/2003/03/lessons-roe-will-past-be-prologue>.

25 Planned Parenthood, "Roe v Wade: Its History And Impact," n.d., https://www.plannedparenthood.org/files/3013/9611/5870/Abortion_Roe_History.pdf.

26 Franklin Foer, "Fetal Viability," Slate Magazine, May 25, 1997, <https://slate.com/news-and-politics/1997/05/fetal-viability.html>.

claim that the fetus was a “rights holding person” as per the constitution was rejected by the court, clarifying that the term person can only be applied after birth²⁷.

The landmark Supreme Court ruling was celebrated by pro-choice activists as settling the abortion rights issue in a significant way. However, the ruling also acted as a catalyst to the anti-choice movement, the members of which self-describe themselves as “pro-life”. Almost immediately after the ruling, lawmakers put efforts into restricting abortion however possible. By the end of 1973, Congress had passed the Helms amendment that restricted the use of federal funding for international family planning programs that included abortion²⁸. In 1976, just three years after the *Roe vs Wade* ruling, the Hyde amendment was passed that prohibited the use of federal funds (such as Medicaid) for abortions, except in cases when carrying the pregnancy to term would endanger the life of the woman²⁹. The Hyde amendment has been reenacted by congress every year since, and has successfully withstood legal challenges that have made its way to the Supreme Court. The exceptions allowed in the amendment in subsequent years varied from its first enactment where the only exception was a danger to the woman’s life. Since 1994 the exceptions have been very narrow - endangerment of woman’s life, or when the pregnancy is the result of rape or incest³⁰. The amendment does not prohibit states to use their own funds to provide abortion services to low income Medicaid enrollees. However, only 16 states currently fund abortions for Medicaid enrollees to pay for all or most

27 History Extra, “A Brief History of US Abortion Law, before and after Roe v Wade,” HistoryExtra, accessed October 12, 2019, <https://www.historyextra.com/period/20th-century/history-abortion-law-america-us-debate-what-roe-v-wade/>.

28 Sneha Barot, “Abortion Restrictions in U.S. Foreign Aid: The History and Harms of the Helms Amendment,” Guttmacher Institute, September 23, 2013, <https://www.guttmacher.org/gpr/2013/09/abortion-restrictions-us-foreign-aid-history-and-harms-helms-amendment>.

29 ACLU, “Access Denied: Origins of the Hyde Amendment and Other Restrictions on Public Funding for Abortion,” American Civil Liberties Union, accessed October 13, 2019, <https://www.aclu.org/other/access-denied-origins-hyde-amendment-and-other-restrictions-public-funding-abortion>.

30 Planned Parenthood, “Hyde Amendment,” accessed October 13, 2019, <https://www.plannedparenthoodaction.org/issues/abortion/hyde-amendment>.

medically needed abortions. This means that a significant proportion of women of reproductive age that rely on Medicaid would have to fund abortion services on their own if their pregnancy does not endanger their life, or is not the result of incest or rape.

Funding for abortions is not the only way opponents of abortion rights have tried to restrict access to abortion care. For example, in the late 1980s, Pennsylvania's legislature amended its abortion laws to introduce various requirements before a woman received the abortion service regardless of how it was funded³¹. These included mandatory notification to at least one parent in case the woman was a minor, a mandatory 24 hour waiting period prior to the procedure, and in case of married women a mandatory notification to the husband that she was going to have an abortion. Abortion rights activists challenged the provisions, but a federal appeals court upheld all provisions except for mandatory notification to the husband. This case, *Planned Parenthood of Southeastern Pennsylvania vs Casey*, made its way to the Supreme court and in 1992, the justices issued a 5-4 ruling that also upheld all provisions of the Pennsylvania laws, except the mandatory notification to the husband. In their ruling, the Justices upheld the *Roe vs Wade* decision but introduced a new standard to determine whether state laws regulating abortion were valid. This standard involved assessing whether the state imposed "undue burden" or "substantial obstacles" on a woman seeking an abortion before the fetus gained viability, and all of Pennsylvania's provisions (except the notification to husband) were deemed as not resulting in such a burden or obstacle.

31 Oyez, "Planned Parenthood of Southeastern Pennsylvania v. Casey," Oyez, accessed October 13, 2019, <https://www.oyez.org/cases/1991/91-744>.

The *Roe* and *Casey* rulings haven't prevented states with a significant number of anti-choice lawmakers to craft legislation that might appear to be for the benefit of women, but is in fact meant to restrict abortion availability. Legal experts refer to these as Targetted Regulation of Abortion Providers (TRAP Laws). A famous example is Texas's House Bill 2, passed in 2013, which stipulated stringent requirements on abortion clinics³². Some of these requirements were that the providers should have admitting privileges in hospitals within 30 miles of the facility, and that the facility itself should comply with minimum standards set for ambulatory surgical centers. While the bill may seem to some as intending to strengthen the quality of services, it in fact resulted in closure of several abortion clinics that were unable to meet the expensive, non-evidence based, unnecessary requirements. The bill was challenged and the *Whole Woman's Health v. Hellersted* case ultimately made its way to the supreme court. The court ruled that the requirements set forth in Texas's HB2 did not have evidence that they benefited women, but sufficient evidence existed that the bill would result in closure of over half of abortion clinics in Texas³³. The remaining clinics would be mostly concentrated in metropolitan areas, which would have meant that women living in remote and rural parts of Texas would need to travel hundreds of miles to have a safe abortion. Many of these women may not have been able to afford the travel.

While Texas's HB2 was repealed, several other states have passed restrictions on abortions that are still in place. For example, 12 states restrict coverage for abortion in private

32 Brooke M.1 Garrett, "Money Matters: Why the Ada's Undue Hardship Framework Could Save Casey and Legal Abortion in America," *University of Colorado Law Review* 88, no. 2 (Spring 2017): 429-73, <http://search.ebscohost.com/login.aspx?direct=true&db=ift&AN=122679551&site=ehost-live&scope=site>.

33 Alexa Ura, "U.S. Supreme Court Overturns Texas Abortion Restrictions," *The Texas Tribune*, June 27, 2016, <https://www.texastribune.org/2016/06/27/us-supreme-court-rules-texas-abortion-case/>.

insurance plans unless the woman's life was endangered, most allowing residents to purchase abortion coverage for an additional price³⁴. 13 states mandate the inclusion of irrelevant information such as the ability of fetus to feel pain, and 5 talk about the purported link between abortion and breast cancer in the counseling given to women before the procedure³⁴. The messaging about fetal pain is based on extremely limited evidence³⁵, and scientific research studies have found no causal linkage between abortion and breast cancer³⁶. Such mandates to give women misleading information serve little purpose other than trying to make a woman seeking an abortion feel emotionally distraught.

The situation for minors seeking an abortion in the United States is replete with additional hurdles. 37 states require parental involvement of some form, ranging from mandatory notification to one parent to a requirement of consent from one or both parents, sometimes requiring proof of parenthood to be presented at the facility before the procedure is performed³⁷. 36 of these states allow for a judicial bypass, where a minor can get court approval to have an abortion without her parent's knowledge. Only 15 states of the 37 states waive parental involvement in cases of rape or incest. Research has shown that such laws do reduce adolescent abortion rates, but have no impact on the rates of adolescent pregnancies, resulting in a higher number of teenage mothers³⁸.

34 Guttmacher Institute, "An Overview of Abortion Laws," Guttmacher Institute, March 9, 2016, <https://www.guttmacher.org/state-policy/explore/overview-abortion-laws>.

35 Stuart W G Derbyshire, "Can Fetuses Feel Pain?," *BMJ : British Medical Journal* 332, no. 7546 (April 15, 2006): 909–12, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1440624/>.

36 American Cancer Society, "Abortion and Cancer Risk," accessed October 14, 2019, <https://www.cancer.org/cancer/cancer-causes/medical-treatments/abortion-and-breast-cancer-risk.html>.

37 Guttmacher Institute, "Parental Involvement in Minors' Abortions," Guttmacher Institute, March 14, 2016, <https://www.guttmacher.org/state-policy/explore/parental-involvement-minors-abortions>.

38 Robert L. Ohsfeldt and Stephan F. Gohmann, "Do Parental Involvement Laws Reduce Adolescent Abortion Rates?," *Contemporary Economic Policy* 12, no. 2 (1994): 65–76, <https://doi.org/10.1111/j.1465-7287.1994.tb00424.x>.

The last decade has seen abortion restrictions being introduced at unprecedented levels. Of the 1,271 abortion restrictions enacted by states since the *Roe v Wade* ruling, 479 restrictions (37.7%), were passed between 2011 and 2019³⁹. This trend became particularly pronounced after the confirmation of Justice Kavanaugh in October 2018, which was widely perceived as solidifying a conservative majority on the Supreme Court. In the 2019 legislative sessions, the first after Justice Kavanaugh's confirmation, 26 abortion bans have been enacted across 12 states. 5 of these states enacted a ban on abortions at six weeks of gestation when many women might not even have learned of their pregnancy.

Increasing abortion restrictions has resulted in women starting to self-induce abortion by purchasing medical abortion pills online⁴⁰. Evidence exists that given proper information, women can self-administer the correct dosage of abortion drugs and assess completeness of the abortion after it has occurred⁴¹. A growing body of evidence suggests that women can also correctly self-assess eligibility by using the date of their last menstrual period to determine gestational age⁴¹. The problem, however, is that the policy landscape around abortion in many states limits the delivery of accurate information and abortion drugs to women should they decide to self-induce, and inculcates a sense of fear of being persecuted.

Growing restrictions on abortion have had a measurable impact on the unintended birth rate in the United States. Table 1 below shows that between 2001 and 2011, the rate of

39 Elizabeth Nash, "A Surge in Bans on Abortion as Early as Six Weeks, Before Most People Know They Are Pregnant," Guttmacher Institute, March 22, 2019, <https://www.guttmacher.org/article/2019/03/surge-bans-abortion-early-six-weeks-most-people-know-they-are-pregnant>.

40 Sarah McCammon, "With Abortion Restrictions On The Rise, Some Women Induce Their Own," NPR.org, accessed October 15, 2019, <https://www.npr.org/2019/09/19/759761114/with-abortion-restrictions-on-the-rise-some-women-induce-their-own>.

41 Megan K Donovan, "Self-Managed Medication Abortion: Expanding the Available Options for U.S. Abortion Care," Guttmacher Institute, October 12, 2018, <https://www.guttmacher.org/gpr/2018/10/self-managed-medication-abortion-expanding-available-options-us-abortion-care>.

unintended pregnancies reduced slightly, but the percentage of unintended pregnancies ending in abortion reduced by a higher percentage. This means that a significant number of births every year are unintended.

Table 1 – Trends in Unintended Pregnancies, and Unintended Pregnancies ending in Abortion

Description	2001	2008	2011
% of Pregnancies that were Unintended	48%	51%	45%
% of Unintended Pregnancies ending in abortion	47%	40%	42%

Adapted from – Research by Finer and Zolna^{42,43}

While conservative states look for an opportunity to strengthen restrictions on abortion, some progressive states have responded by strengthening abortion rights in anticipation of the Supreme Court potentially upholding abortion bans or overturning the rights set out in *Roe v Wade*. For example, Illinois’ Reproductive Health Act that was signed into law this year requires private health insurance companies to cover abortion if they cover other pregnancy related services⁴⁴. In Vermont, Bill H.57 was passed in both the House and the Senate to "prohibit public entities from interfering with or restricting the right of an individual to terminate the individual's pregnancy" and recognized abortion as a fundamental right⁴⁵. New York’s Reproductive Health Act, also passed in 2019, could be considered the most progressive with its

42 Finer, Lawrence B., and Mia R. Zolna. "Unintended Pregnancy in the United States: Incidence and Disparities, 2006." *Contraception* 84, no. 5 (November 1, 2011): 478–85. <https://doi.org/10.1016/j.contraception.2011.07.013>.

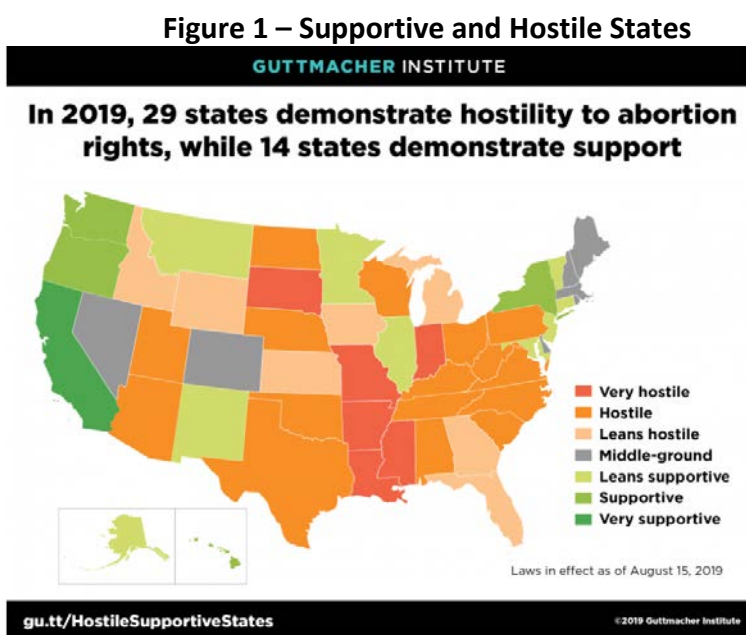
43 Finer, Lawrence B., and Mia R. Zolna. "Declines in Unintended Pregnancy in the United States, 2008–2011." Research-article. <https://doi-org.proxy1.library.jhu.edu/10.1056/NEJMsa1506575>, March 2, 2016. <https://doi.org/10.1056/NEJMsa1506575>.

44 Maureen McKinney, "As Other States Restrict Abortion Rights, Illinois Protects and Expands | NPR Illinois," accessed October 15, 2019, <https://www.nprillinois.org/post/other-states-restrict-abortion-rights-illinois-protects-and-expands>.

45 Caroline Kelly, "GOP Vermont Governor to Allow Abortion Rights Bill to Become Law - CNNPolitics," accessed October 15, 2019, <https://www.cnn.com/2019/05/22/politics/vermont-governor-abortion-bill/index.html>.

provision of enabling mid-level providers to perform certain abortion procedures, rather than requiring that all procedures be performed by doctors⁴⁶.

Such state level legislative action has resulted in a wide disparity among the nation's population in accessing abortion services. The Guttmacher Institute, a research organization that monitors state level abortion policy, classified each state from very hostile to very supportive. In 2019, only 14 states demonstrate support for abortion access.



Source – The Guttmacher Institute⁴⁷

As we stand today, it is almost inevitable that at least one of the state abortion bans from 2019 will make its way to the Supreme Court. The most likely of these is the one in Louisiana, which is almost identical to Texas's HB2 that was struck down by the court in 2016⁴⁸.

46 George Pierpoint, "Why Are People Talking about NY's Abortion Law?," January 28, 2019, sec. US & Canada, <https://www.bbc.com/news/world-us-canada-46994583>.

47 Institute, Guttmacher. "State Abortion Policy Landscape: From Hostile to Supportive." Guttmacher Institute, December 10, 2018. <https://www.guttmacher.org/article/2019/08/state-abortion-policy-landscape-hostile-supportive>.

48 Jordan Ross, "Abortion Clinics Appeal to Supreme Court to Block Louisiana Law," accessed October 15, 2019, <https://www.jurist.org/news/2019/01/abortion-clinics-appeal-to-supreme-court-to-block-louisiana-law/>.

Whether the new Supreme Court with a conservative majority will uphold precedence and strike down such a ban is yet to be seen. The best case scenario is that all abortion bans passed in 2019 will eventually be struck down by federal courts or the Supreme Court. The more likely scenario is that some bans would be allowed to exist, with the reasoning that they do not impose undue burden on women, but gradually adding to the list of burdens that the courts decide are acceptable.

Policy Proposal

The goal of this policy proposal is to expand access to abortions by making Mifepristone and Misoprostol (prescription drugs used to induce abortions) available at the approximately 67,000 pharmacies in the country⁴⁹, and eliminating state laws that serve no purpose other than restricting access to abortion services. By leveraging the legal and technological infrastructure that exists for telemedicine providers, eliminating restrictions that have hampered the growth of medical abortion, and abolishing burdensome requirements placed on women and providers that are not evidence based, the proposal seeks to make abortion available to women regardless of where in the country they reside.

Policy Authorization

Legislation should be introduced at the beginning of the 2020 legislative session that addresses the regulation of abortion nationwide, targetting legislation at the state level that focuses on restricting access to safe abortion. The legislation, named *Protecting Women's Health Act*, will help address the barriers that women face in states with anti-abortion state legislatures and endeavor to reduce this inequality compared to the women living in states with access to comprehensive reproductive health. The constitutional basis of this legislation comes from Congress's authority to enforce the guarantees of individual liberty stemming from the due process clause of the 14th amendment, and to regulate cross-border travel to seek abortion

49 Mazen Qato, Dima, Shannon Zenk, Jocelyn Wilder, Rachel Harrington, Darrel Gaskin, and Caleb Alexander. "The Availability of Pharmacies in the United States: 2007–2015." PLOS ONE 12, no. 8 (August 16, 2017). <https://doi.org/10.1371/journal.pone.0183172>.

alternatives under the Commerce clause (Article 1, Section 8, Clause 3 of the U.S. Constitution)⁵⁰.

The legislation will force the Food and Drug Administration (FDA) to lift the Risk Evaluation and Mitigation Strategy (REMS) on Mifepristone, allowing it to be dispensed at any pharmacy with a routine prescription. Misoprostol is already available at pharmacies and is used to treat other conditions. Lifting the REMS on Mifepristone will enable providers to send the prescription to the woman's nearest pharmacy, and give her the option to take the pills outside of a medical facility.

In addition, the proposed legislation would seek to nullify TRAP (Targeted Regulation of Abortion Providers) laws that are not backed by scientific evidence. Specifically, the legislation would nullify state imposed requirements of abortion clinics maintaining structural standards that are comparable to those for surgical centers, minimum corridor widths, specification of maximum distance to hospitals, mandatory transfer agreements with hospitals or admitting privileges for health care providers offering abortion services. The legislation would nullify any laws that ban the provision of telemedicine abortion. Any state imposed restrictions on abortion related coverage by private insurance providers participating in the state healthcare exchanges/marketplace would be nullified.

Third, the legislation will eliminate state required counseling practices that make the abortion procedure psychologically distressing to women. No provider would be required to discuss medically irrelevant information, such as fetal pain, negative psychological effects after

50 Correia, Edward. "The Uneasy Case for a National Law on Abortion." *The American Prospect*, December 5, 2000. <https://prospect.org/api/content/300c9709-0925-547e-9add-da9992cef05c/>.

the procedure, and a link to breast cancer regardless of the method of abortion (surgical or medical) being used. Mandatory waiting periods after counselling, which currently range from 18-72 hours, would be nullified, as would be the requirement of minors (aged 15 years or older) to notify and get consent from a parent before the procedure. The procedure should be treated like any other informed consent process where the provider can discuss risks, benefits and alternatives based on the provider's training and expertise, without the government mandating a specific message to be delivered.

Finally, the legislation nullifies any state defined gestation limits for abortion provision, and leaves the determination of fetal viability before abortion provision to the provider.

Policy Implementation

The legislation will work to incentivize the scaling up of existing infrastructure, including telemedicine abortion provision, by eliminating legal obstacles and undue burdens on both providers and women.

The National Abortion Federation (NAF) maintains a list of providers across the country that provide abortion services⁵¹. Another non-profit, called the Reproductive Health Access Project (RHAP), connects primary care clinicians across the country to expand access to abortion⁵². By eliminating the TRAP laws that have led to fewer providers in many states, such non-profits can work on expanding their network by enabling providers in non-hospital settings, especially in rural and underserved areas, to provide abortions more easily. The organizations

⁵¹National Abortion Federation. "Home." Accessed November 25, 2019. <https://prochoice.org/>

⁵² Reproductive Health Access Project. "Reproductive Health Access Network." Accessed November 25, 2019. <https://www.reproductiveaccess.org/programs/network/>.

serve an important role in communicating with providers, disseminating accurate information about legislative changes, clinical best-practices, and client centered care.

The elimination of restrictions on private insurance providers to cover abortion procedures will help women that are able to acquire such insurance. For women who are uninsured and lack necessary funds to cover the cost of the procedure, there exists a National Network of Abortion Funds (NNAF) - a nonprofit organization comprising of state level abortion funds that help women get money for an abortion procedure⁵³. The passage of this legislation could help empower the NNAF to raise more funds in an effort to expand access through the network of pharmacies, new providers through NAF or RHAP, and telemedicine providers.

There have been pilot projects run by nonprofit organizations that focus on telemedicine abortion. This is sometimes the only option for women that live in very rural areas and do not have the means to travel to the nearest provider. One such project, called TelAbort, has seen some success but has only been able to send pills to women via mail because of an FDA waiver that the project received⁵⁴. Lifting the REMS on Mifepristone will allow such projects to be scaled up, and incentivize telemedicine providers that are passionate about abortion access to register with organizations such as NAF and RHAP.

29 states and the District of Columbia currently participate in the Interstate Medical and Licensure Compact, which allows providers to expeditiously gain a license to practice, physically or through telemedicine, in any of the participating states. Besides registering with NAF and

53 National Network of Abortion Funds. "National Network of Abortion Funds at Abortionfunds.Org." Accessed November 25, 2019. <https://abortionfunds.org/>.

54 Halpern, Sue. "The Challenges of Innovating Access to Abortion," March 6, 2019. <https://www.newyorker.com/science/elements/the-challenges-of-innovating-access-to-abortion>.

RHAP, providers would also be able to volunteer with the newly launched Miscarriage and Abortion hotline, where doctors volunteer their time in helping patients self-manage the medical abortion process⁵⁵.

In the unlikely event of an incomplete abortion after taking the medical abortion drugs, current federal law allows the use of federal funds, such as Medicaid, to receive treatment to treat incomplete abortion or complications of abortion similar to those with spontaneous abortion or miscarriage. This is because the pregnancy has ended, but incomplete abortion poses a potential danger to the woman's life if the uterus is not evacuated. An analysis of potential costs to Medicaid is included in the following section.

⁵⁵ M+A HOTLINE. "M+A HOTLINE." Accessed November 25, 2019. <https://www.mahotline.org>.

Policy Analysis

This proposal effectively addresses the expansion of abortion access through unique ways. First, by protecting both women and abortion providers engaging in telemedicine abortion in the first trimester and lifting the REMS restriction on mifepristone, it eliminates the barrier of distance that exists for many women in receiving the service.

In Ireland, where abortion has been restricted until recently, women without the means to travel abroad have resorted to telemedicine to safely end unintended pregnancies. A study that examined self-reported outcomes of women using telemedicine abortion over a three year period found that the success rates of self-managed medical abortion compared favorably with the success rates of medical abortions performed in the formal health care system when a combination of mifepristone and misoprostol was administered⁵⁶. Another study conducted in Iowa that compared the effectiveness of telemedicine provision vs face to face provision at a Planned Parenthood clinic found similar results with regards to effectiveness and acceptability among women⁵⁷. The drug combination is important, as Misoprostol which is a commonly available drug and used to treat other conditions can on its own induce abortion. However, the effectiveness of the Mifepristone-Misoprostol combination has been found to be higher than the use of misoprostol alone⁵⁸.

56 Aiken, Abigail R. A., Irena Digol, James Trussell, and Rebecca Gomperts. "Self Reported Outcomes and Adverse Events after Medical Abortion through Online Telemedicine: Population Based Study in the Republic of Ireland and Northern Ireland." *BMJ* 357 (May 16, 2017): j2011. <https://doi.org/10.1136/bmj.j2011>.

57 Grossman, Daniel, Kate Grindlay, Todd Buchacker, Kathleen Lane, and Kelly Blanchard. "Effectiveness and Acceptability of Medical Abortion Provided Through Telemedicine." *Obstetrics & Gynecology* 118, no. 2 (August 2011): 296. <https://doi.org/10.1097/AOG.0b013e318224d110>.

58 Ngoc, Nguyen Thi Nhu, Jennifer Blum, Sheila Raghavan, Nguyen Thi Bach Nga, Rasha Dabash, Ayisha Diop, and Beverly Winikoff. "Comparing Two Early Medical Abortion Regimens: Mifepristone+misoprostol vs. Misoprostol Alone." *Contraception* 83, no. 5 (May 2011): 410–17. <https://doi.org/10.1016/j.contraception.2010.09.002>.

Mandating the FDA to lift the REMS on mifepristone is recommended by the ACOG and the AMA^{59,60}. Studies have shown that Mifepristone is effective and safe⁶¹, and lifting the REMS will allow the drug to be dispensed at any pharmacy, rather than be limited to registered clinics, hospitals or facilities. Telemedicine providers will then be able to call the Mifepristone-Misoprostol prescription into a pharmacy convenient to the woman, and give her instructions on dosage, what to expect after the drugs are administered, and when to seek medical attention. This will especially benefit women living in rural counties with no abortion providers, and in states left with a single abortion clinic that is a significant distance from them.

Both mifepristone and misoprostol are currently available to women in the United States through websites that sell them without the need for a prescription. A study conducted to evaluate the ingredient content of these pills found that Mifepristone contained within 8% of the labeled amount of active agent, and Misoprostol usually contained a much lesser % of the labeled amount⁶². The 18 combination products that the study tested cost between \$110-\$360 dollars. Women who do not have the means to get an abortion under the care of a provider have resorted to information available through informal channels, such as the internet, to purchase these drugs and self-administer them. By widening access through telemedicine abortion, women will be able to obtain accurate information from a provider and obtain access

59 American Medical Association. "Memorial Resolutions Adopted Unanimously - 2018 Annual Meeting." Accessed November 10, 2019. <https://www.ama-assn.org/sites/ama-assn.org/files/corp/media-browser/public/hod/a18-resolutions.pdf>.

60 The American College of Obstetrics and Gynecologists. "Increasing Access to Abortion - ACOG." Accessed November 10, 2019. <https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Increasing-Access-to-Abortion?IsMobileSet=false>.

61 Cleland, Kelly, and Nicole Smith. "Aligning Mifepristone Regulation with Evidence: Driving Policy Change Using 15 Years of Excellent Safety Data." *Contraception* 92, no. 3 (September 1, 2015): 179–81. <https://doi.org/10.1016/j.contraception.2015.06.016>.

62 Murtagh, Chloe, Elisa Wells, Elizabeth G. Raymond, Francine Coeytaux, and Beverly Winikoff. "Exploring the Feasibility of Obtaining Mifepristone and Misoprostol from the Internet." *Contraception* 97, no. 4 (April 1, 2018): 287–91. <https://doi.org/10.1016/j.contraception.2017.09.016>.

to quality drugs through their pharmacy. This could potentially reduce the shadow market that exists for abortion inducing drugs.

Another way this proposal will contribute towards the expansion of abortion access is by nullifying TRAP (Targeted Regulation of Abortion Providers) laws that have contributed towards the dwindling number of medical facilities that provide abortion. Such laws range from onerous licensing requirements to mandating relationships with hospitals for admitting privileges, cost prohibitive infrastructure requirements, and have been associated with a reduction in the number of facilities because of their inability to comply. Between 2011 and 2016, at least 162 clinics shut down while only 21 new clinics opened⁶³. Such state regulations lack scientific evidence of medical necessity and are not supported by expert bodies such as the AMA and ACOG⁶⁴. While there is no guarantee that the clinics that have closed due to TRAP laws will reopen or be replaced, a policy landscape that allows businesses and clinicians to operate without unnecessary regulation to provide abortion services could result in renewed investment by the private and non-profit sector.

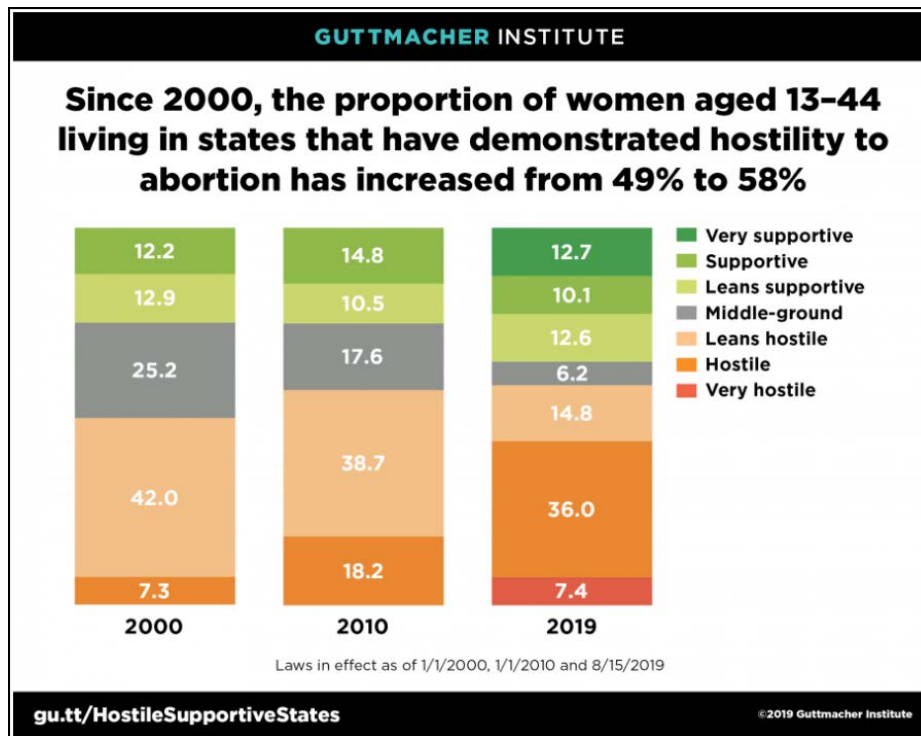
The proposal also combats the growing inequity in abortion access between states. State imposed regulation of gestation limits, parental consent and counseling practices has resulted in the location and financial means of a woman to be a key determinant of how easy access to abortion will be and the quality of the service they receive. An analysis published by

63 Jones, Rachel K., and Jenna Jerman. "Abortion Incidence and Service Availability In the United States, 2014." *Perspectives on Sexual and Reproductive Health* 49, no. 1 (2017): 17–27. <https://doi.org/10.1363/psrh.12015>.

64 APHA. "Opposition to Requirements for Hospital Admitting Privileges and Transfer Agreements for Abortion Providers." Accessed November 10, 2019. <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2015/12/14/11/04/opposition-to-requirements-for-hospital-admitting-privileges-for-abortion-providers>.

the Guttmacher Institute stated that the proportion of women aged 13-44 living in states that are considered hostile to abortion access increased by 9% between 2000 and 2019⁶⁵. After the wave of anti-abortion legislation that was seen in the 2019 legislative session, 58% of women of reproductive age live in states where they will either face difficulty in accessing abortion services or be subjected to distressing counseling procedures, forced parental notification etc.

Figure 2 – Changes in the proportion of women living in hostile states



Source – The Guttmacher Institute⁶⁶

65 Institute, Guttmacher. “State Abortion Policy Landscape: From Hostile to Supportive.” Guttmacher Institute, December 10, 2018. <https://www.guttmacher.org/article/2019/08/state-abortion-policy-landscape-hostile-supportive>.

66 Institute, Guttmacher. “State Abortion Policy Landscape: From Hostile to Supportive.” Guttmacher Institute, December 10, 2018. <https://www.guttmacher.org/article/2019/08/state-abortion-policy-landscape-hostile-supportive>.

A nullification of state imposed requirements that are medically unnecessary and merely existing to limit abortion access will help reduce this inequality in both the availability and quality of abortion access.

Much of the proposed legislation focuses on market based solutions by removing regulation that has resulted in clinic closures, disallowed insurance providers from including abortion coverage in state insurance marketplaces, and nullifying pre-abortion counseling practices that are designed to avert patient caseloads through distressful descriptions, imagery and misleading information. The proposal truly embodies the concept of personal liberty of the individual – both the provider as well as the patient. This argument, however, will not hold among legislators that subscribe to the ideals of fetal personhood before viability, something that has already been settled by the supreme court as not being the case⁶⁷.

Since the bill could result in increased self-management of medical abortion with the support of telemedicine providers, it would be important to consider Medicaid costs for women needing in-person care after a failed medical abortion. To forecast the amount of federal Medicaid dollars that would be needed, a model was prepared by using the following data -

1. Estimates of abortion incidences in 2014 – 926,200, published in a study that surveyed all US facilities known to have provided abortion services in that year⁶⁸.

67 Extra, History. "A Brief History of US Abortion Law, before and after Roe v Wade." HistoryExtra. Accessed October 12, 2019. <https://www.historyextra.com/period/20th-century/history-abortion-law-america-us-debate-what-roe-v-wade/>.

68 Jones, Rachel K., and Jenna Jerman. "Abortion Incidence and Service Availability In the United States, 2014." *Perspectives on Sexual and Reproductive Health* 49, no. 1 (2017): 17–27. <https://doi.org/10.1363/psrh.12015>.

2. Rate of medical abortions in 2014, published based on a data review by Reuters – 43%⁶⁹.
3. The success rate of medical abortion resulting in a complete abortion in the first trimester, published after a systematic review of existing research on medical abortion – 94.6%⁷⁰.
4. The average cost of a surgical abortion - \$451⁷¹. As this number is from research dating back to 2009, the cost was adjusted using BLS’s inflation calculator.

Figure 3 – CPI Inflation Calculator

The image shows a screenshot of the BLS CPI Inflation Calculator. At the top, there is a dark red header with the text "CPI Inflation Calculator" in white. Below the header, the input fields are: a dollar sign followed by a text box containing "451.00"; a dropdown menu showing "May" and a year dropdown showing "2009". Below these, the text "has the same buying power as" is displayed. Underneath, there is a yellow highlighted text box containing "\$541.48", followed by a dropdown menu showing "September" and a year dropdown showing "2019". At the bottom of the calculator interface is a grey "Calculate" button.

Source - <https://data.bls.gov/cgi-bin/cpicalc.pl>

Based on the above numbers, table-2 below calculates the number of first trimester abortions, performed using medication, that would be unsuccessful (and potentially need a surgical procedure) if the annual abortion incidences remained at 2014 levels.

69 Amburg, Jesse Van. "More Women Are Seeking the Abortion Pill Instead of Surgery." Time. Accessed November 11, 2019. <https://time.com/4551575/abortion-pill-medical-abortion-rates/>.

70 Kapp, Nathalie, Elisabeth Eckersberger, Antonella Lavelanet, and Maria Isabel Rodriguez. "Medical Abortion in the Late First Trimester: A Systematic Review." Contraception 99, no. 2 (February 1, 2019): 77–86. <https://doi.org/10.1016/j.contraception.2018.11.002>.

71 Jones, Rachel K., and Kathryn Kooistra. "Abortion Incidence and Access to Services In the United States, 2008." Perspectives on Sexual and Reproductive Health 43, no. 1 (March 2011): 41–50. <https://doi.org/10.1363/4304111>.

Table 2 – Cost to Medicaid from incomplete abortions

Annual Abortion incidences	926,200
Number of Medical abortions @ 43% - a	398,266
Successful Medical Abortions @94.6% - b	376,760
Incomplete medical abortions requiring surgical a procedure - a-b	21,506
Cost per Procedure	541
Annual Cost to Medicaid (cost x incomplete incidences)	11,645,266

The enactment of this legislation could result in reversing the trend of a decreasing legal abortion rate, simply because it will make it more accessible. While this may draw backlash from anti-choice groups and legislators, it will still be economically efficient for the US taxpayer. An analysis published in 2015 found that births from unintended pregnancies cost the American taxpayers a whopping \$ 21 billion dollars per year⁷². Even in an unlikely scenario that the abortion rate grows manifold, and all incomplete medical abortions were treated through Medicaid, the cost from this proposal comes nowhere close to the cost of unintended pregnancies being carried to term. A growing abortion rate will only help to offset such costs by preventing unintended births.

72 Ingraham, Christopher. "Unplanned Pregnancies Cost Taxpayers \$21 Billion Each Year." Washington Post. Accessed November 11, 2019. <https://www.washingtonpost.com/news/wonk/wp/2015/03/03/unplanned-pregnancies-cost-taxpayers-21-billion-each-year/>.

The strengths of a market based solution could in some ways also be considered a drawback. Women are still left on their own to cover the cost of the initial abortion procedure, or be at the mercy of nonprofit abortion funds that help cover such costs. A survey conducted in six different districts in the US found that most abortion patients were poor or low-income⁷³. 50% of the sample population relied on someone else to help cover the cost, and a significant number delayed paying other bills such as rent, childcare expenses and utilities to pay for the abortion⁷³.

Another aspect of the proposal that could be considered lacking, is that it does little for women who have an abortion after the first trimester. While only 10.3% of annual abortions are estimated to happen at or after 13 weeks, the procedure is much more costly, provided by fewer providers, and is predominantly obtained by women and teenage girls from socially disadvantaged groups⁷⁴. This also includes women with a much higher level of financial constraint, making them likely to end up giving birth funded through public assistance programs such as Medicaid.

If the bill is successfully passed and becomes law, it is inevitable that anti-abortion interest groups will take legal action to prevent the law from going into effect. While the proposal relies on provisions in the US constitution (the due process clause and the commerce clause), it is likely that the Supreme Court will ultimately decide if the legislative branch of the government can pass a law that somewhat challenges legal precedence. The court has allowed

73 Jones, Rachel K., Ushma D. Upadhyay, and Tracy A. Weitz. "At What Cost? Payment for Abortion Care by U.S. Women." *Women's Health Issues* 23, no. 3 (May 2013): e173–78. <https://doi.org/10.1016/j.whi.2013.03.001>.

74 Jones, Rachel K., and Lawrence B. Finer. "Who Has Second-Trimester Abortions in the United States?" *Contraception* 85, no. 6 (June 1, 2012): 544–51. <https://doi.org/10.1016/j.contraception.2011.10.012>.

state level restrictions to go into effect where it felt that they were within the parameters of *Roe* or *Casy* rulings. There is also precedence where it has reversed its previous decision around abortion restrictions. For example, in 2000, the court had initially invalidated a state level partial-birth abortion ban in *Stenberg vs Carhart* as being in violation of *Roe v Wade* by a 5-4 vote. Congress then passed the Partial Birth Abortion Ban Act in 2003, which was ruled by three federal appellate courts as unconstitutional. However, in 2007, the supreme court upheld the constitutionality of a partial birth abortion ban through another 5-4 vote in *Gonzales v Carhart*⁷⁵. The difference between the two supreme court decisions was the replacement of Justice Sandra D O'Connor who had voted against the ban with Justice Samuel Alito who voted for it. When the Supreme Current justices rule on legislation like the one proposed, they may decide to compare it to the legality of same sex marriage, that it doesn't make sense for states to govern women's bodies just like it didn't make sense for them to govern people's marital choices. Alternately, the justices could fall back on the Casey ruling and decide that states can regulate abortion as long as they do not impose "undue burden" or "substantial obstacles", with the court determining what qualifies as such a burden or obstacle.

75 S.M. "Can Congress Over-Ride a Supreme Court Decision?" The Economist, July 28, 2015. <https://www.economist.com/democracy-in-america/2015/07/28/can-congress-over-ride-a-supreme-court-decision>.

Political Analysis

This proposal comes just before a Presidential election year, and one where Sen. Collins will possibly run for re-election. In the last year, the abortion issue has been a significant political news-maker for the Senator. In October 2018, the Senator said Justice Kavanaugh views legal precedent as “a constitutional tenet that has to be followed except in the most extraordinary circumstances”, indicating that this would lead him to preserve *Row. v Wade’s* constitutionality, and justifying her vote to confirm him as a supreme court justice⁷⁶. At the beginning of 2019, when the state legislatures began passing the deluge of TRAP laws and Louisiana’s law that would have left just one provider for the whole state came to the supreme court, Justice Kavanaugh voted to decline a stay on the enforcement of such law⁷⁷. The law ultimately was blocked as Justice Roberts joined the other more liberal judges in blocking the law. Justice Kavanaugh even went on to write a dissent of the supreme court decision to block the law, suggesting that the law should be allowed to go ahead so it can be seen “how it plays out”. In the next calendar year, it is inevitable that the Supreme Court will rule on the constitutionality of one or more anti-abortion laws passed this year, and Justice Kavanaugh’s actions indicate that he is likely to vote in favor of such laws. The passage of such laws and

76 Agorakis, Stavros. “Read the Full Transcript of Sen. Collins’s Speech Announcing She’ll Vote to Confirm Brett Kavanaugh.” Vox, October 5, 2018.

<https://www.vox.com/2018/10/5/17943276/susan-collins-speech-transcript-full-text-kavanaugh-vote>.

77 Mahdawi, Arwa. “Brett Kavanaugh Shows True Colours in Supreme Court Abortion Dissent | Arwa Mahdawi.” The Guardian, February 9, 2019, sec. World news.

<https://www.theguardian.com/commentisfree/2019/feb/09/brett-kavanaugh-shows-true-colours-in-supreme-court-abortion-dissent>.

elevation into constitutional precedence will not only contribute towards chipping away abortion access, it will also be politically damaging to Sen. Collins.

The Senator's Democrat opponent for 2020, Speaker Sara Gideon, successfully sponsored a bill that allowed advanced clinical practitioners – physician assistants, nurse practitioners, and midwives, to perform abortion services that are currently limited to physicians in Maine⁷⁸. Rep. Gideon has also publicly discredited Sen. Collins for her vote to confirm Kavanaugh and has highlighted the fact that her vote led the Senator to raise a significant amount of money⁷⁹. The sponsorship of the proposed legislation could result in a strong statement from the Senator, confirming her stance as a supporter of women's access to safe abortion.

The importance of such a statement before the 2020 elections could be vital in Maine's electoral landscape in a re-election year. Sen. Collins' approval ratings dropped 16 points in the first quarter of 2019, with 48% disapproving in the latest polls⁸⁰. Analysts cite her support for the President's tax bill and vote to confirm Justice Kavanaugh as two primary reasons for the low approval rating⁸⁰. Proposing the legislation could help increase the approval ratings ahead of the re-election.

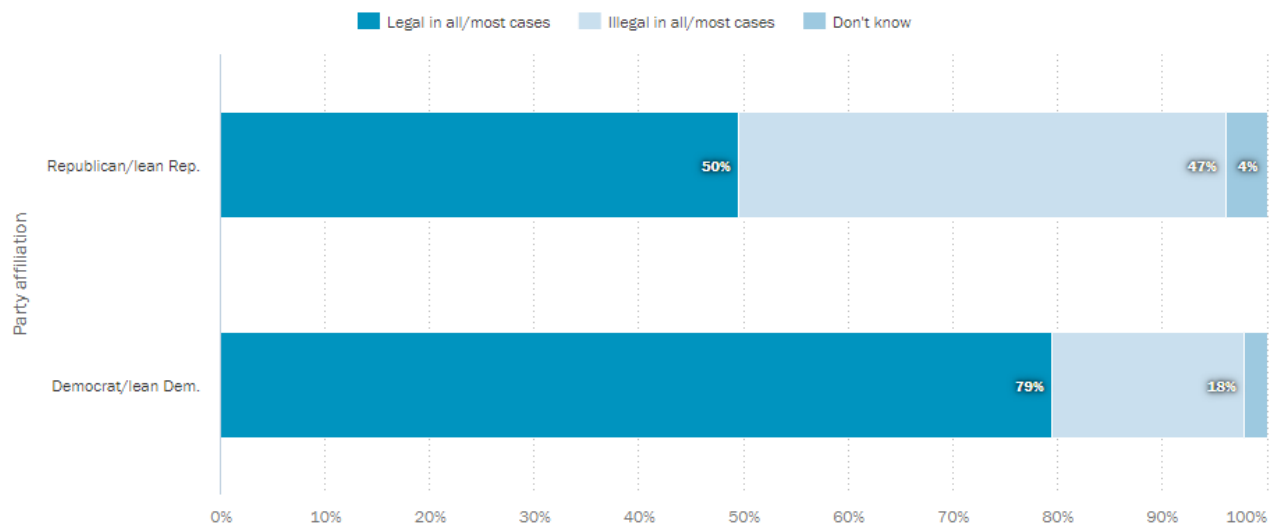
78 North, Anna. "While Some States Try to Ban Abortion, These States Are Expanding Access." Vox, June 12, 2019. <https://www.vox.com/identities/2019/6/12/18662738/abortion-bill-illinois-maine-laws-new-york>.

79 Thomas, Elizabeth. "Sen. Susan Collins Challenged by Top Maine Democrat." ABC News. Accessed November 19, 2019. <https://abcnews.go.com/Politics/maine-house-speaker-sara-gideon-announces-run-susan/story?id=63930873>.

80 Kilgore, Ed. "Susan Collins's Approval Rating Dives As Reelection Contest Approaches." Intelligencer, July 18, 2019. <http://nymag.com/intelligencer/2019/07/susan-collins-approval-rating-dives-as-2020-approaches.html>.

Research from Pew Research Center shows that 47% of voters in Maine identify as Democrats and 17% as Independent⁸¹. Support for abortion among Democrats is strong, as expected, but even amongst those that identify as Republicans, 50% believe that abortion should be legal in all or most cases. The proposed legislation at the federal level to protect abortion access is likely to be viewed favorably by the large majority of constituents.

Figure 4 – Maine residents views on the legality of abortion by party affiliation



Source – Pew Research Center⁸²

The chances of the bill passing through the Senate sub-committee on Health, Education, Labor and Pensions (HELP) are high. Sen. Murkowski (R-AK), will likely join Sen. Collins and the 11 Democrat Senators in approving the bill, or a very close version of it. Only 10 of the 23

81 Pew Research Center, Suite 800 Washington, and DC 20036 USA202-419-4300 | Main202-419-4349 | Fax202-419-4372 | Media Inquiries. "Party Affiliation among Adults in Maine - Religion in America: U.S. Religious Data, Demographics and Statistics." Pew Research Center's Religion & Public Life Project. Accessed November 20, 2019. <https://www.pewforum.org/religious-landscape-study/>.

82 Pew Research Center, Suite 800 Washington, and DC 20036 USA202-419-4300 | Main202-419-4349 | Fax202-419-4372 | Media Inquiries. "Party Affiliation among Adults in Maine - Religion in America: U.S. Religious Data, Demographics and Statistics." Pew Research Center's Religion & Public Life Project. Accessed November 20, 2019. <https://www.pewforum.org/religious-landscape-study/>.

members of the committee, all republican Senators who identify pro-choice, are expected to vote against introducing the bill on the floor. Such committee approval will itself generate significant press, building political goodwill for Sen. Collins among her pro-choice base in Maine and nationwide.

The success of the bill, when debated and voted in the full Senate in 2020, is unlikely. The vast majority of the 53 Republican senators identify as “pro-life”, meaning that they are likely to be opposed to any legislation that expands access. Sen. Collins, Sen. Capito (R-WV), and Sen. Murkowski are the three republican senators that identify as pro-choice. Sen. Capito’s record on abortion is mixed, and in 2018 she voted for a federal ban on abortions after 20 weeks which failed to pass the Senate⁸³. However, the fact that she openly supports *Roe v. Wade* and will possibly seek re-election next year could lead her to vote for the proposed legislation. Both independent senators Angus King (I-ME) and Bernie Sanders (I-VT) identify as pro-choice, and will likely support the passage of this bill. Amongst the 45 democrats, Sen. Bob Casey (D-PA) and Sen. Joe Manchin (D-WV), identify as pro-life. Only the other 43 democrats are likely to support such a bill. This means that the bill will fail after receiving only 48 votes (43 Democrats, 2 Independents, and 3 Republicans).

Besides the national media coverage the vote on the bill will generate, it is also possible that movement around such legislation could spur action in the House of Representatives, which for the first time since the *Roe v Wade* decision in 1973 has a majority that supports

83 O’Keefe, Ed. “Abortion Ban Bill Fails to Advance in the Senate.” Washington Post. Accessed November 22, 2019. https://www.washingtonpost.com/politics/abortion-ban-bill-fails-to-advance-in-the-senate/2018/01/29/98ad2c0e-0518-11e8-94e8-e8b8600ade23_story.html.

abortion rights⁸⁴. 1952 was the last presidential election year that the house flipped, and analysts expect that Democrats (the majority of whom identify as pro-choice) will keep control of the House in the 2020 election⁸⁵. There is also a possibility of gains in the Senate by the Democrat party in 2020, though at this stage it isn't expected to be a slam-dunk⁸⁶. This could mean that in the year 2021, there is a higher number of Senators that support abortion rights, in addition to the support that already exists in the House. While it is too early to predict the outcome of the 2020 presidential election, one thing that is clear is that every single Democrat front-runner has been unequivocal about their support for abortion rights⁸⁷.

The focus on abortion rights by the Democrat party and presidential candidates seems to be grounded in public sentiment. A poll conducted by CNN and the Des Moines Register in Iowa found that the Iowa voters would prioritize women's access to abortion over any other issue, including climate change, as they head towards the 2020 primary⁸⁸. Gallup polling data (Figure 5) shows that even amongst Republican voters in America, the satisfaction with the country's abortion policies has been steadily declining since 2001⁸⁹. Such polls indicate that a legislative initiative to protect and expand abortion access is likely to be viewed positively by a

84 Rovner, Julie. "House Democrats' Focus On Abortion Could Stymie Work With Senate." NPR.org. Accessed November 22, 2019. <https://www.npr.org/sections/health-shots/2019/01/22/687418404/house-democrats-focus-on-abortion-could-stymie-work-with-senate>.

85 Kilgore, Ed. "Why Democrats Will Almost Certainly Hold the House in 2020." *Intelligencer*, May 2, 2019. <http://nymag.com/intelligencer/2019/05/the-democratic-house-is-probably-unflippable-in-2020.html>.

86 Chinni, Dante. "The Senate Suddenly Looks like It's up for Grabs in 2020." *NBC News*. Accessed November 22, 2019. <https://www.nbcnews.com/politics/meet-the-press/senate-suddenly-looks-it-s-grabs-2020-n1048706>.

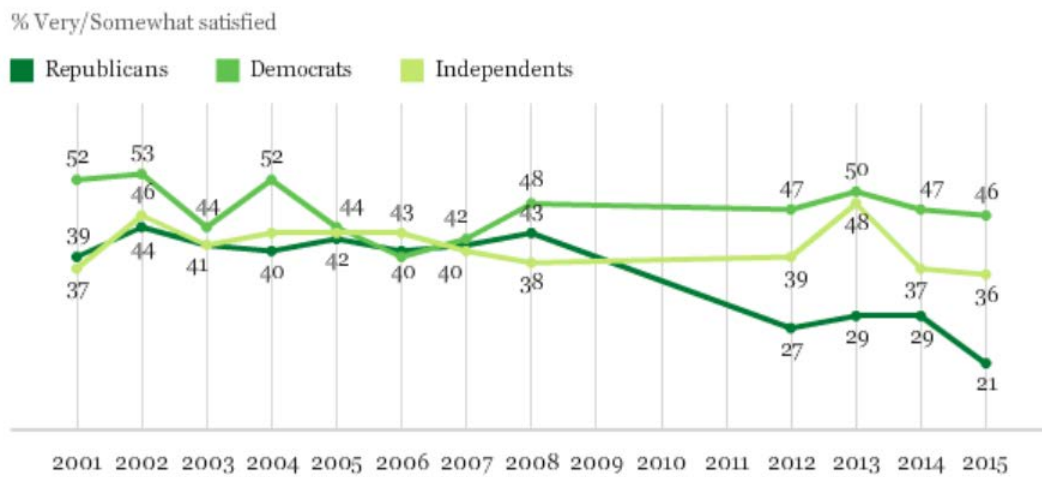
87 North, Anna. "We Asked All the 2020 Democratic Candidates Where They Stand on Abortion Rights. Here's What They Said." *Vox*, June 22, 2019. <https://www.vox.com/2019/6/22/18693279/abortion-rights-2020-democrats-hyde-amendment-roe>.

88 Scott, Dylan. "2020 Is Quickly Becoming the Abortion Rights Election. Here's Proof." *Vox*, June 10, 2019. <https://www.vox.com/policy-and-politics/2019/6/10/18659919/iowa-abortion-laws-2020-election-biden-hyde-amendment>.

89 Inc, Gallup. "Fewest Americans Satisfied With Abortion Policies Since 2001." *Gallup.com*, February 9, 2015. <https://news.gallup.com/poll/181502/fewest-americans-satisfied-abortion-policies-2001.aspx>.

majority of Americans. Even if the bill fails to pass in 2019, it could be viewed as a sign of the pendulum starting to swing in the other direction when it comes to abortion rights.

Figure 5 - Nationwide poll on satisfaction with US abortion policies



Source – Gallup⁸³

A political downside to the introduction of this bill ahead of the 2020 reelection, is that Sen. Collins is likely to see a drop in donations coming in from Republican donors. While the supporters of rolling back abortion rights might be a minority among the larger republican voters, they have shown their passion and fervor on the issue by donating to Sen. Collins after her vote to confirm Justice Kavanaugh. In the three months following the confirmation in 2018,

Sen. Collins raised \$4.4 Million for her 2020 race, almost thrice the amount raised during the same period six years ago⁹⁰.

NARAL Pro-Choice America, one of the main interest groups that lobby for abortion rights, has endorsed Speaker Gideon as the US Senate candidate from Maine for the 2020 election⁹¹. Even if Sen. Collins introduces and sponsors the proposed legislation in the election year, it is likely that Speaker Gideon will be the recipient of donations from supporters of abortion access across the country. Speaker Gideon is also likely to be the recipient of the \$4 Million raised on the CrowdPac platform during Justice Kavanaugh's confirmation process, an amount that is higher than the total money raised by Sen. Collins's 2014 challenger – Shenna Bellows, during her entire campaign⁹².

The 2018 mid-term election saw Maine's vote swing further to the left, with the State Senate, Governor's office, and the 2nd district flipping from Republican to Democrat control. Sen. Collins is now in a position where she is the only Republican delegation from Maine to the US Congress. A bold move on expanding abortion rights could, on the one hand, be crucial to retain her seat in the Senate, but will in no way guarantee that it will help win back the voters that she herself admitted to losing when she voted for Justice Kavanaugh's confirmation⁹³.

90 Pathé, Simone, and Simone Pathé. "Only 13 Mainers Gave \$200 or More to Susan Collins in Latest Quarter." Roll Call, April 8, 2019, sec. campaigns.
<https://www.rollcall.com/news/campaigns/susan-collins-contributions-maine>.

91 NARAL Pro-Choice America. "NARAL Pro-Choice America Endorses Sara Gideon for U.S. Senate." NARAL Pro-Choice America, June 25, 2019.
<https://www.prochoiceamerica.org/2019/06/25/naral-gideon-endorsement/>.

92 Piper, Jessica. "Big Bucks Ready to Flow into Maine as Susan Collins Aims to Keep Her Seat." OpenSecrets News, June 24, 2019.
<https://www.opensecrets.org/news/2019/06/big-bucks-to-maine-susan-collins-reelect2020/>.

93 Folley, Aris. "Collins Says She's 'sad' about Some of the Support She Lost from Voters over Her Vote for Kavanaugh | TheHill." Accessed November 24, 2019.
<https://thehill.com/homenews/senate/459046-collins-says-shes-sad-about-some-of-the-support-shes-lost-from-voters-over>.

Recommendation

The abortion issue will likely take center stage in the upcoming election year. Politically, the strategy for politicians running for office whose views align with their party is fairly straight forward. For the minority of politicians, like Sen. Collins, whose views on the issue digress from the vast Republican majority, it is imperative that a careful approach be adopted to minimize political damage.

The proposed legislation is likely to significantly strengthen women's access to abortion and reduce the disparity between women living in states with supportive legislatures versus those living in states that have adopted an anti-abortion stance. By framing the legislation as solidifying individual liberties, both for women and the providers, the legislation is an innovative and affordable policy solution to make incremental progress on the issue. While the legislation will inevitably be voted down in the Senate, the political gains from sponsoring the bill and getting it passed in the Senate HELP committee still make this a lucrative policy proposal.

Senator Collins is widely expected to run again for the seat that she has held since 1997. In 2020, when the Supreme Court first rules on one of the many abortion bans that were passed this year, the public will be closely looking at Justice Kavanaugh's vote and reminiscing the speech the Senator gave before the confirmation vote. A 5-4 decision that results in any of the bans attaining the status of constitutional precedence, with Justice Kavanaugh voting in the majority, will make it highly unlikely for Sen. Collins to win the vote of her constituents in Maine, the vast majority of whom identify as pro-choice. Even if such a scenario were not to occur, the Senator would benefit from taking the proposed policy action in an attempt to win over the votes she lost from confirming Justice Kavanaugh.

The most notable political disadvantage of sponsoring the proposed legislation is a potential loss of funding from conservative groups and citizens. The Senator's pro-choice supporters from across the country are unlikely to be swayed in supporting her financially, and Rep. Gideon is likely to be the recipient of donations from groups and individuals that support abortion rights. However, Sen. Collins has already amassed \$6.5 Million for the 2020 race, and is possible will exceed the \$8 Million (her most expensive race) that was spent to defeat Tom Allen in 2008⁹⁴. Such financial standing for the campaign, combined with endorsements from Democrat Senators such as Diane Feinstein (D-California) and Joe Manchin (D-W.Va) provides a strong political standing for the upcoming re-election year. The sponsorship of the proposed bill has the potential to alleviate the doubt that many Maine citizens have over the Senator's commitment to abortion access, reaffirming her position as a moderate, independent,

94 Mistler, Steve. "Susan Collins Has Raised Over \$6.5 Million In Re-Election Campaign." Accessed November 30, 2019. <https://www.mainepublic.org/post/susan-collins-has-raised-over-65-million-re-election-campaign>.

Republican. It is therefore recommended that Sen. Collins introduce the *Protecting Women's Health Act* in the HELP committee at the earliest opportunity.

Curriculum Vitae

Anand Cerillo Sharma

Work Experience

Ipas	April 2017 – Present
<i>Associate Program Manager, Asia/ April 2018 – Present</i>	
<i>Program Financial Analyst, Asia/ April 2017-March 2018</i>	
Credit Suisse	August 2015 –March 2017
<i>Assistant Vice President</i>	
Thermo Fisher Scientific	June 2014 - August 2015
<i>Staff Accountant</i>	
Goldman Sachs	September 2009 - March 2014
<i>Associate/ January 2014-March 214</i>	
<i>Senior Analyst/ January 2013 – December 2013</i>	
<i>Analyst/ September 2009 – December 2012</i>	

Education

University of Delhi, Shaheed Bhagat Singh College	2009
Bachelor of Commerce (Honors)	
The Johns Hopkins University	2019 (Expected)
MA, Public Management	