



## U.S. Abortion Politics in the Early Twenty-First Century

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Fierce battles over abortion go on and on in U.S. politics. Pro-life and pro-choice activists have engaged in pitched legal warfare ever since the Supreme Court issued thunderbolt decisions in the 1973 landmark cases *Roe v. Wade* and *Doe v. Bolton*. Pro-choice advocates have long believed that the original Supreme Court decisions settled the main issues; but pro-life advocates have remained mobilized to oppose and chip away at legal abortion rights and access. Pro-choice activists were caught off guard by the strength and sustained determination of the pro-life movement, and have been trying to stave off legislative losses with limited success.

### Major Gains for the Pro-Life Movement

Starting in the 1980s, pro-life advocates adopted a legislative strategy they have deployed repeatedly. By pushing amenable state legislatures to pass restrictions, they test the legislative waters and defend the constitutionality of each new wave of abortion limits all the way to the Supreme Court. After the Supreme Court legitimizes a particular restriction, advocates introduce similar bills in state legislatures across the country. Rather than directly challenge women's individual rights, pro-lifers have mostly pushed bills that require others, such as counselors or parents of teenagers, to take part in abortion decisions, or that legally enshrine rights for unborn babies. Pro-lifers also push bills that restrict women's access to clinics and doctors.

- A 1989 court decision, *Webster v. Reproductive Health Services*, upheld a Missouri statute that required fetal viability testing after the twentieth week of pregnancy – an important precursor to current legislative efforts to ban abortion after twenty weeks.
- A 1992 court ruling in *Planned Parenthood of Southeastern Pennsylvania v. Casey* allowed states to restrict access to abortion as long as the requirements did not place an “undue burden” on women's ability to obtain an abortion. After this ruling validated their basic legislative strategy, pro-lifers have successfully pushed for the enactment of “informed consent” laws that require women to undergo counseling before obtaining an abortion and have persuaded legislatures to pass dozens of “Targeted Regulation of Abortion Provider” laws that limit where and by whom the procedure can be performed.

Major gains have been made by pro-lifers. By early 2014, twenty-one U.S. states prohibited abortion if the fetus is viable; twenty-six required a waiting period before an abortion; seventeen mandated counseling; and forty-three allowed institutions to refuse to provide abortions.

### Defeats and Repositioning for Pro-Choice Advocates

Pro-choice advocates have found themselves on the defensive, forced to fall back on constitutional challenges to legal restrictions on abortion procedures. This has not been a winning strategy, because courts have upheld

many restrictions. Alternative efforts by pro-choice advocates have focused, with mixed success, on pushing back against pro-life, direct action groups that use disruptive and sometimes violent means to close abortion clinics.

- In 1994, pro-choice groups won passage of the Freedom to Access Clinic Entrances Bill, which made it a federal crime to use force, the threat of force, or physical obstruction to prevent individuals from obtaining or providing reproductive health care services. Pro-choice advocates have also persuaded some state legislatures to pass buffer zones laws that prohibit pro-life protestors from blocking abortion clinics and walkways. However, in recent years, pro-lifers have successfully challenged buffer zones in the Supreme Court. In June 2014, the Supreme Court struck down a Massachusetts law that required protestors to stay outside a thirty-five foot buffer zone around abortion clinics. With similar laws facing challenges in other states, some are not being enforced.
- In 1997, pro-lifer Neal Horsley created the Nuremberg Files website to compile information on abortion providers and high-profile supporters, noting which individuals were active, which had been injured, and which had been killed by pro-lifers. Pro-choice advocates took Horsley to court and the Ninth Circuit Court of Appeals determined the website constituted a true threat to those listed on it.

Currently, many pro-choice advocates are working to connect abortion to broader health and reproductive justice agendas – highlighting ways in which economic inequalities undercut optimal health care and reproductive freedom for many women.

## What Comes Next in Continuing Abortion Battles?

Despite their many successes, pro-lifers are dealing with ideological divisions that undermine their abilities to forward a legislative agenda. When Tea Party Republicans won majorities in many state legislatures, pro-lifers capitalized on the gains to get waves of abortion restrictions passed. But they also began to fight among themselves, as some advocates pushed for “personhood” amendments to state constitutions, which define a fertilized human egg as a legal person. Other pro-life advocates feared public backlash against such extreme provisions; and recently many Republican women have pushed back against pro-life efforts to abolish legal abortion after the twentieth week. These divisions will persist for the foreseeable future.

Pro-choice groups are struggling to regain lost rhetorical and legislative ground. Rhetorical wars can be challenging, because Republicans are making a play for women voters on other reproductive issues like birth control, in the hope of narrowing the overall gender gap. Even if this strategy fails to move public attitudes and electoral outcomes, pro-choicers must contend with the Supreme Court’s recent decision in *Burwell v. Hobby Lobby*, which effectively pits women’s individual rights to control personal reproductive decisions against newly posited “religious” rights allowing corporate owners to refuse to include birth control in employer health plans. Facing cross pressures among donors and voters, many Democratic candidates and office holders are also torn about how far to go in defending reproductive freedoms – and this will make it more difficult for pro-choice advocates to advance their legislative goals.

**Read more in Deana A. Rohlinger, *Abortion Politics, Mass Media, and Social Movements in America* (Cambridge University Press, 2015).**