

## Keeping abortion legal: a look beyond *Roe v. Wade*

The United States' Supreme Court's new term brings intense speculation about the possibility that a court retirement and new appointment might reverse the narrow margin of support that the *Roe v. Wade* abortion decision currently retains. Although upholding *Roe* is crucial, an emphasis on the importance of the Supreme Court should not deflect attention from the ongoing erosion of abortion rights in the United States. Abortion rights are being undermined, with new laws restricting access and funding, and public debate focused narrowly on choice as a legal issue.

Anti-abortion state and federal legislators have been passing laws restricting abortion rights: in the past 8 years alone, state legislatures have enacted 335 anti-choice laws [1]. These stealthy, restrictive laws do not ban abortion outright, but are very effective in making it more difficult for women to access and clinicians to provide abortion care. New laws in some states, for example, impose waiting periods that require women to delay their abortions after receiving counseling. Mandated delays create hardships for women who lack transportation, have privacy concerns, or live in areas with few or no local providers. Targeted Regulations of Abortion Providers (TRAP) laws require physicians who provide abortions to comply with complicated and cumbersome facilities requirements mandating the number of parking spaces, the rate of air flow, or the width of doorways, for example [2].

Words and definitions used in public discussion also matter. A narrow focus that considers abortion only as an issue of "choice" is vulnerable to anti-abortion rhetorical strategies. For one thing, it immediately invites criticism of abortion as a "bad" choice. Women can be portrayed as selfish for deciding to terminate a pregnancy, placing their own interests or quality of life above the presumed interests of the fetus. The term "choice" also suggests a "privilege," and invites approaches that challenge women to justify their abortion decision. The perception of abortion as a "choice" or "privilege" also makes it easier to justify not funding abortion: the Hyde amendment bans the use of federal funds for abortion, and many states fail to cover the cost of abortions for indigent women, even when medically necessary [3]. "Informed consent" laws require physicians to recite and in some cases distribute anti-abortion information, including detailed pictures of fetal development and

biased information about abortion risks (many states have considered, and several have passed, laws requiring providers to counsel patients that abortion may increase the risk of breast cancer, despite the well-established medical consensus to the contrary). Abortion opponents justify these scripts on the grounds that they are simply helping women to make a better, more informed "choice."

But the abortion "choice" is not between having an abortion and not having one, but between having an abortion and carrying a pregnancy to term. Ironically, adolescents who are required to demonstrate their maturity in order to obtain a judicial waiver of parental consent for abortion need not demonstrate their preparedness to become mothers. Women's social and economic situations may in fact give them no real choice at all if they face poverty, loss of family support, or the threat of violence in connection with their pregnancy. But if the language of choice is inadequate, how should we articulate support for legal abortion? How can we voice the full range of values and morals involved in the issue?

Access to safe, legal abortion is critical for women's equality and right to physical autonomy. Full participation in society is not realistically possible without the ability to decide when to become a mother. Women uniquely face the health risks and responsibilities of pregnancy and motherhood, and unintended pregnancy without recourse to safe abortion clearly affects physical autonomy. Unintended pregnancy is a common problem and 43% of women in the United States are estimated to have had an abortion by the age of 45, suggesting that the ability to terminate a pregnancy is important in the lives of many women [4].

Legal abortion is also essential for social equity and justice. During the 1960s era of state abortion law reform, remedying the inequity of a system of criminalized abortion was an important issue. Women without money or connections could not easily travel overseas for an abortion, find a safe abortion provider, or persuade a hospital committee to approve an abortion based on health considerations. Now, as anti-abortion laws erode access and rights, disadvantaged women are again finding that their rights are disproportionately affected. With fewer than 2,000 abortion providers in the entire United States [5], women who live in areas without a provider, are poor, or lack transportation, have already

lost the “right” to abortion protected by *Roe v. Wade*. Poor women’s access is also compromised by the ban on federal funding of abortion, and the lack of public funding for abortion care by many states.

Legal abortion also involves the issue of respect for religious diversity and tolerance. Separation of church and state is an essential value in a pluralistic society with many spiritual viewpoints and groups. Moral values implied in respect for religious diversity include not imposing one’s views on others, and valuing tolerance. Respect for diversity demands an understanding that each individual best knows her own situation and can thus best make decisions for herself, while humility reminds us not to judge others.

As professionals in the field of reproductive health, we can speak out about the incremental erosion in abortion rights and access that is being advanced in state and federal legislation, as well as the threat posed by appointments of anti-abortion judges. We can also bring a fuller moral perspective to the issue of abortion care by including justice, tolerance, and equality along with legal rights in our public discussion. Upholding *Roe v. Wade* is important, but it is not enough: protection for legal abortion is meaningless if it exists in law, but not in practice.

Felicia H. Stewart, MD  
*ARHP Board Chair*

Wayne C. Shields  
*ARHP President and CEO*

Ann C. Hwang MD  
*UCSF Center for Reproductive Health Research & Policy*

## References

- [1] National Abortion Rights Action League (NARAL). Who decides? A state-by-state review of abortion and reproductive rights. Washington (DC): NARAL, 2003.
- [2] Center for Reproductive Rights. Targeted regulations of abortion providers (TRAP): avoiding the TRAP. Available at: [http://www.reproductiverights.org/pub\\_fac\\_trap.html](http://www.reproductiverights.org/pub_fac_trap.html). Accessed July 31, 2003.
- [3] American Civil Liberties Union. Public funding for abortion [fact sheet]. Available at: <http://www.aclu.org/ReproductiveRights/ReproductiveRights.cfm?ID=9039&c=146>. Accessed August 19, 2003.
- [4] Henshaw SK. Unintended pregnancy in the United States. *Fam Plann Perspect* 1998;30:24–9, 46.
- [5] Henshaw SK, Finer LB. The accessibility of abortion services in the United States, 2001. *Perspect Sex Reprod Health* 2003;35:16–24.