

Sixteen for '16 - Number 12: Federalize Abortion

By [Salvatore Babones](#), Truthout | Op-Ed

The United States needs one law on abortion, not 50 or 500. The balance between a woman's right to an abortion and society's interest in her fetus should not depend on where a woman happens to live, work or seek health care.

National abortion law currently rests on a series of Supreme Court decisions, most famously the 1973 *Roe v. Wade* decision that legalized abortion nationwide. The constitutional basis for the right to abortion found in *Roe v. Wade* is based on the thin reed of the Fourteenth Amendment, passed in 1868 to prevent states from reintroducing new forms of slavery.

The Fourteenth Amendment ensures that no state shall "deprive any person of life, liberty, or property, without due process of law," from which has been implied a general right to privacy, from which has been implied a right to privacy in pregnancy, from which has been implied a right to abortion.

This is good so far as it goes, but it is hardly a secure footing on which to base such a basic human right as reproductive self-determination.

The problem is: if we had a national abortion law, what would it be? For most of the last 40 years, the mood in Congress has been decidedly reactionary. Congress has been much more disposed to restrict abortion rights than to protect them.

Are the members of Congress really so anti-abortion, or does Congress act irresponsibly because individual members can rest easy in the knowledge that if any of their loved ones ever needed an abortion, she could just go to another state, or even overseas if necessary?

Only the members of Congress know for sure. Besides, having a daughter who needs an abortion is something different from needing one oneself. Very few serving members of Congress are of an age and gender that they are likely to be put in the position of needing discreet abortion care.

The Decline of Abortion Rights

What if there were no *Roe v. Wade* to serve as a backstop for a spineless Congress that is unwilling to face the need for the federal legislation of abortion rights? What would Congress do if abortion became illegal in most or all of the United States?

We may not have to wait very long to find out. According to research from the Guttmacher Institute, 43 states allow healthcare institutions to refuse to perform abortions.⁽¹⁾ When anti-abortion activists are willing to harass, intimidate or even kill to make their point, it is not surprising that many institutions are unwilling to provide abortion care.

The number of clinics that provide abortion services has fallen dramatically in the last 20 years with most of the remaining clinics concentrated in a small number of states, and nearly one-third of them are operated by a single organization, Planned Parenthood.

Research from The Huffington Post shows that 11 states saw reductions in abortion availability of more than 20 percent over the brief period from 2010 to 2013, including Texas and Pennsylvania. All in all, 17 states experienced reduced availability. Only two states saw expanded access.(2)

A major driver of this decline in the availability of abortion care is the so-called TRAP strategy: targeted regulation of abortion providers. These are politically motivated state rules that impose frivolous burdens on health care providers with the obvious intention to discourage them from offering abortion services.

State TRAP rules include new regulations on things like clinic room size and corridor width that specifically target abortion providers - but not other, similar health care organizations.

The 15 states that have passed TRAP rules are a rogue's gallery of mainly Southern and Midwestern states whose legislation generally shows little concern for maternal health.

Then there are the cruel rituals imposed on women seeking an abortion: forced adoption counseling, forced misinformation about fetal pain, and most nefarious of all, forced viewing of ultrasound images of fetuses. All of these are transparently intended to disturb the patient, not to improve maternal health.

The Role of Government

Government does have an appropriate role to play in the regulation of abortion and in the setting of general guidelines for health care professionals who are involved in providing abortion services. If state governments cannot responsibly play this role, the federal government should. In legislating on abortion, Congress should step in to ensure that women in all parts of the United States have access to safe, affordable abortion services. It should also define the areas over which states can exercise reasonable local discretion in the regulation of abortion.

But we all know that Congress will never tackle such a tough issue on its own. The next president will have to prod Congress into action. A president who is the president of all 50 states is in a position to push Congress toward settling a compromise that works for all 50 states. It won't be easy, but it is doable, and it is necessary.

The key is for the president to get Congress to debate a national abortion policy, a legislative replacement for Roe v. Wade, instead of focusing on piecemeal abortion-related legislation.

The only existing federal law on abortion is the Bush-era Partial-Birth Abortion Ban Act of 2003 that prohibits the intact dilation and extraction method of abortion. This is a poor model for

future legislation. The details of medical procedures are surely a matter for doctors to decide, not lawyers.

A progressive president should shift the terms of the abortion debate as only a president can. The overwhelming majority of Americans - around 80 percent - believe that abortion should be legal, depending on the circumstances.⁽³⁾ An outspoken president with moral conviction can leverage 80 percent approval into meaningful political gains.

The federalization of abortion rights will take moral conviction and hard work. If a progressive president can make push come to shove, perhaps the federal government can.

Notes:

1. Guttmacher Institute, State Policies in Brief: An Overview of Abortion Laws, June 1, 2014.
2. Laura Basset, Anti-Abortion Laws Take Dramatic Toll On Clinics Nationwide, Huffington Post August 26, 2013 (updated November 11, 2013).
3. Gallup, Gallup Historical Trends: Abortion, 2012-2014 average.