

The “War on Women”

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The expression the “war on women” has been circulating among political discourse and mainstream media on both sides of the political spectrum for almost two years now, ever since the 2010 midterm elections, and has gained momentum in the last months. Does this expression reflect any sort of reality? Or are we simply in the presence of efforts on the part of the conservative wing of the Republican party to attack Obama whenever it can? The answer to both questions would appear to be “yes”.

Ever since the Republicans regained the House in 2010 they have led battle after battle over policy that would directly impact women: among other things, they were successful in opposing a bill addressing gender-based wage discrimination, are striving to create a stricter definition of rape and to weaken the extent of the Violence Against Women Act, and last but not least, have voted 33 times against all or part of the Affordable Care Act (ACA).¹

Republican presidential candidates included a man who wants to eliminate funding for Title X programs that would fund Planned Parenthood (Mitt Romney)², a man who thinks that abortion should be outlawed in all circumstances with no exceptions for rape, incest, or the health of the woman (Rick Perry),³ a man who based a large part of his condemnation of Obama's contraception insurance mandate on the grounds that “sex is supposed to be within marriage” and birth control is “a license to do things in a sexual realm that is counter to how things are supposed to be” (Rick Santorum),⁴ a man who voted against the Family and Medical Leave Act (Newt Gingrich),⁵ and a man who says to victims of sexual harassment on

¹ Jennifer Haberkorn and Seung Min Kim, "House votes to repeal 'Obamacare' – again", *Politico*, July 11, 2012, available at <http://www.politico.com/news/stories/0712/78403.html>.

² The winner, Mitt Romney, confirmed his position on Missouri television station on March 14th, 2012. When asked how he would balance the budget, he responded “Of course you get rid of Obamacare, that’s the easy one, but there are others... Planned Parenthood, we’re going to get rid of that.”(Ann Rubin, "Mitt Romney: 'Planned Parenthood', We're Gonna Get Rid of That' ", KSDK, March 14th, 2012 (see at 0:52 seconds, <http://www.ksdk.com/news/local/story.aspx?storyid=309910>).

³ "Rick Perry Changes Anti-Abortion Stance to Include Incest", http://slatest.slate.com/posts/2011/12/28/rick_perry_on_abortion_texas_gift_of_life_made_him_expand_his_ant_i_abortion_views_to_include_rape_incest.html.

⁴ "Santorum Still Supports State Right to Outlaw Contraception", http://abcnews.go.com/blogs/politics/2012/01/santorum-explains-06-loss-still-supports-state-right-to-outlaw-contraception/?utm_source=twitterfeed&utm_medium=twitter.

⁵ "Is Gingrich the Worst Candidate for Women ?" http://www.slate.com/blogs/xx_factor/2011/12/28/newt_gingrich_and_women_emily_s_list_says_he_s_the_worst.html.

the job “Why don't you just quit when the so-called harassment starts?” (Ron Paul)⁶. Naturally, the conservative wing of the Republican party is not fully representative of Republicans at large, nor are they fully responsible for the persistent lack of equality between men and women in the United States. To understand the latter, one needs recall more profound origins linked to the history of public policy and women in the US, the role played by major actors throughout, and above all the functioning of the US federal system.

“You've come a long way, Baby”?

There is no doubt that evolution towards more equal rights between women and men occurred throughout the 20th century. Along with advertisers at the end of the 1960s, one can say about women as a group “You've come a long way, Baby”.⁷ Indeed, for most young people in the Western world today, meeting someone who defines her/himself as a “feminist” either brings an empathetic smile to their face (“how quaint, she is wistful for her youth”) or provokes a wry chortle. It is almost surrealistic for today's younger generations to imagine that it was only after the mid-1960s that women could open their own bank account without the permission of a father, husband, brother, or judge. It is even more difficult to conceive of the fact that only 50 years ago, access to contraception in the United States was illegal. For most of today's youth, it is a given that women have access to and exercise all forms of manual and intellectual professions. Yet it was only 36 years ago (1976), following years of vehement resistance on the part of the military elite and the Department of Defense, that President Gerald Ford signed Congressional Public Law 94-106 allowing women the possibility to apply to the prestigious military officer training Academies, West Point in New York and the Air Force Academy in Colorado.

The idea that men and women should benefit from equal rights before the law is rarely contested, and a recent poll showed that most Americans are persuaded that women have the same constitutional rights as men do. This latter point is not true. Women's constitutional rights, consistently challenged to this very day, have required special attention by the US Supreme Court, seeing that their specific rights (in matters of discrimination, for example) are guaranteed only inasmuch as Congress, state legislative assemblies, or state and federal court decisions so wish to attribute them. Obviously, this attribution was and is dependent on the political and juridical winds of a particular historical moment, and one knows that, by definition, winds are an ever changing phenomena.

Despite federal laws prohibiting discrimination between men and women in the insurance industry,⁸ few know that to this day private insurance companies continue to practice what is known as “gender rating”, in other words higher monthly payments for women due to the fact that between 18 and 45 years of age, the average health care budget of a woman is higher than that of a man. This is not surprising; for the most part, women and not men take responsibility for their contraception, visits to the gynecologists are more frequent than men's visits to specialists, not to mention the costs of pregnancy and childbirth.

⁶ “Ron Paul Opposed Workplace Harassment Protections”, <http://2012.talkingpointsmemo.com/2011/12/in-book-ron-paul-opposed-workplace-harassment-protections.php>.

⁷ Launched in 1968 and capturing the heartbeat of a social movement - the start of the feminist movement's “second wave” - Philip Morris's advertising campaign targeted young women using images of women's emancipation and liberty but also esthetic values promoting elegance and slimness.

⁸ Even in the realm of nominative personal genetic information: *The Genetic Information Nondiscrimination Act of 2008* (Pub.L. 110-233, 122 Stat. 881) 2008.

Likewise, and beyond procreating age, women are more likely to care for their elderly parents, associating them when possible to their insurance plans, than men are.

Many other realms of public life still lack in equality between men and women. Despite the Equal Pay Act of 1963⁹ and the Lilly Ledbetter law¹⁰ - the latter does not prohibit pay discrimination but simply allows women more time to pursue their employers in court for pay discrimination - women still do not earn equal pay for equal work. On average, women earn only about 77% of what men earn. The famous “glass ceiling” (preference for a man over a woman with the same qualifications to attain high-level decision-making positions) and also the “glass wall” (preference for a man over a woman with the same qualifications to change positions) remain the norm in both the private sector but also in the political arena.¹¹ Indeed, as the first woman director of policy planning at the State Department put it in her much debated and often decried July 2012 *The Atlantic* article, "It's time to stop fooling ourselves (...) women who have managed to be both mothers and top professionals are superhuman, rich, or self-employed".¹²

Sociologists tell us that it is all about conciliating the public and private realms. So, what about the private realm and its famous “right to privacy”, a beacon for feminists? One may speak of progress, indeed, but only for certain categories of women. As Sister Song and other groups of the Reproductive Justice movement have demonstrated,¹³ access to the “right to privacy” is far from being evenly distributed, and the argument of “choice” is only reserved to middle and upper-middle-class women. The large and growing majority of other women, poor and uninsured, have had to bear the brunt of devolution in the realm of welfare policy

⁹ Equal Pay Act, Public Law No. 88-38, 1963.

¹⁰ "Lilly Ledbetter law", Public Law 111-2—January. 29, 2009; 123 STAT. 5, Public Law 111-2, 2009.

¹¹ Women currently hold 3.8% of *Fortune* 500 CEO positions and 4% of *Fortune* 1000 CEO positions: <http://www.catalyst.org/publication/271/women-ceos-of-the-fortune-1000>. Globally, only 9% of CEO positions are held by women. Additional analyses found that only 17% of their survey participants said their companies had targeted efforts for recruiting more women: <http://hildebrandtblog.com/2012/09/13/women-in-leadership-positions-improving-the-pipeline/#refff4> (consulted September 25th, 2012). Women in elected positions, world data from June 2012. The top four out of 144 nations are Rwanda, Andorra, Cuba, and Sweden; the U.S. is ranked 80. <http://www.ipu.org/wmn-e/classif.htm>.

¹² Anne-Marie Slaughter, "Why Women Still Can't Have it All", July, 2012.

<http://www.theatlantic.com/magazine/archive/2012/07/why-women-still-cant-have-it-all/309020/>. She states in the first of several proposals to change this reality: “Millions of other working women face much more difficult life circumstances. Some are single mothers; many struggle to find any job; others support husbands who cannot find jobs. Many cope with a work life in which good day care is either unavailable or very expensive; school schedules do not match work schedules; and schools themselves are failing to educate their children. Many of these women are worrying not about having it all, but rather about holding on to what they do have. And although women as a group have made substantial gains in wages, educational attainment, and prestige over the past three decades, the economists Justin Wolfers and Betsey Stevenson have shown that women are less happy today than their predecessors were in 1972, both in absolute terms and relative to men. The best hope for improving the lot of all women, and for closing what Wolfers and Stevenson call a 'new gender gap' —measured by well-being rather than wages—is to close the leadership gap: to elect a woman president and 50 women senators; to ensure that women are equally represented in the ranks of corporate executives and judicial leaders. Only when women wield power in sufficient numbers will we create a society that genuinely works for all women. That will be a society that works for everyone”.

¹³ The Reproductive Justice movement coalesced from grass roots feminist groups established in the early 1970s and throughout the 1980s, most of them in opposition to and critical of mainstream feminist groups accused of only catering to well-off white women. The term was then coined in 1994 at the United Nation's International Conference on Population and Development in Cairo. Sister Song, one of the most well-known and active collectives of this movement, organized the March for Women's Lives which gathered a million persons in Washington D.C. on April 25th, 2004 (<http://www.sistersong.net/>).

(from the national AFDC –Aid to Families with Dependent Children- program to TANF – Temporary Assistance for Needy Families- in 1996), and in the realm of access to abortion and contraception, especially since two US SC decisions, *Webster v. Reproductive Services* (1989) and *Planned Parenthood v. Casey* (1992).

Women’s health at risk

On the national front, the House Republican majority has long been working on passing annual spending bills that would have a direct impact on women of all socio-economic categories. Ever since its passage in 2010, the House majority has voted 33 times to repeal, defund or overturn all or part of the Affordable Care Act (ACA).¹⁴ In the more recent past, the House has worked towards allowing employers to deny insurance coverage for contraception or any service the employer may object to for any reason. It has also sought to cut funding for educating teens about contraception and increase funding to 20 million dollars a year on abstinence-only education. It succeeded in blocking a proposed rule limiting the number of home health care workers – 90% of whom are women - who can be exempted from minimum wage.

Its biggest endeavor, and a successful one to boot, was to block the Paycheck Fairness Act (PFA), meant to update and strengthen the Equal Pay Act of 1963 by providing women with better tools to fight pay discrimination. Among other things, the PFA would have prohibited unfair retaliation against employees who discussed pay disparities on the job, strengthened enforcement tools used to uncover pay discrimination, and encouraged employers to voluntarily evaluate their own pay practices. The act, supported by [President Obama](#) and widely supported by [Democrats](#), died in the Senate in June 2012 after a 52-47 vote.

But perhaps the most aggressive move on the part of House Republicans lies in their multiple efforts to defund Title X of the Public Health Service Act, which includes the well-known Planned Parenthood.¹⁵ Title X began in 1970 with bipartisan support, then-President Richard Nixon declaring that “no American woman should be denied access to family planning because of her economic condition”. The program gave federal grants to provide comprehensive health care coverage for women, regardless of their economic status, and today clinics financed by this program provide [almost 5 million women](#) with contraceptives and other preventive services, such as breast exams and Pap smears. According to a [Guttmacher Institute study](#), 6 in 10 women who obtain care at a Title X–supported center consider it to be their usual source of medical care. Indeed, many of these women go to Title X centers because they can’t afford health care in other places.¹⁶ In 2011, House and Senate Republicans threatened to shut the government down unless Planned Parenthood stopped receiving funds from the federal government. Calling it a deficit issue, they said cutting this funding would lower the national debt, and thus chose to ignore studies

¹⁴ Jennifer Haberkorn and Seung Min Kim, *op.cit.*, "House votes to repeal ‘Obamacare’ – again", *Politico*, July 11, 2012, available at <http://www.politico.com/news/stories/0712/78403.html>.

¹⁵ 157 Cong. Rec. H1235 (daily ed. Feb. 18, 2011) (Roll Call Vote No. 93) (vote on Pence Amendment to prohibit use of funds for Planned Parenthood Federation of America); U.S. House of Representatives vote on final passage of H.R. 1, (Feb. 19, 2011) (Roll Call Vote No. 147) available at <http://clerk.house.gov/evs/2011/roll147.xml>; 157 Cong. Rec. H2802 (daily ed. April 14, 2011) (Roll Call Vote No. 271) (vote on final passage of H.Con. Res. 36).

¹⁶ "Title X-Supported Family Planning Services Nationally and in Each State", <http://www.guttmacher.org/media/inthenews/2011/02/16/index.html>.

demonstrating that enabling access to preventive services would save the government (and taxpayers) money from not having to pay huge costs associated with unwanted pregnancies and trips to the emergency room for preventable conditions.

Throughout the states, the war on women is even more glaring, especially in the realm of privacy and reproductive health and justice. Some states, like Wisconsin, are trying to pass laws that would make it a crime to have children out of wedlock. For example, Republican Senator Glenn Grothman's bill would define "non-marital parenthood" as a cause of child abuse.¹⁷ Elsewhere, and taking their cue from states like Michigan or Wisconsin, several state legislatures are trying to refashion their divorce laws to make it harder for a couple who wants to divorce to do so.¹⁸ The idea was launched by George W. Bush's Administration with its "Healthy Marriage Initiative" calling for courts to re-establish fault in divorce proceedings. The initiative, which had no national bearing but served as a model for the states, stipulated that couples took their marriage vows before God, that the "state should support them in keeping these vows", and that this was important "because children whose parents are divorced are more likely to be expelled from school, get pregnant, be poor or kill themselves".¹⁹

By far, the issues that have received the most attention and encountered the highest level of success on the state level involve reproductive rights and health. Since the aforementioned US Supreme Court *Webster* (1989) and *Casey* (1992) decisions maintaining a woman's constitutional right to an abortion before viability but also attributing to the states the possibility to control access, abortion restrictions have taken on many forms. Forty-six states authorize doctors and/or attending staff to refuse to practice an abortion for religious and/or moral reasons, and 43 states allow the same for entire clinics and/or hospitals. Four states disallow private insurance companies from covering abortions, and 11 states do not allow public health insurers to cover abortions for their public employees. Several states require doctors to disseminate propaganda and inappropriate or flat-out fictitious medical "information", such as "abortion provokes breast and/or ovarian cancer".²⁰

In 2010-2011 alone, legislators in the 50 states combined introduced more than 1,100 reproductive health and rights-related provisions, a sharp increase from the 950 introduced in 2010. By the end of 2011, 135 of these provisions had been enacted in 36 states, an increase from the 89 enacted in 2010 and the 77 enacted in 2009. Fully 68% of these new provisions - 92 in 24 states - restrict access to abortion services, a striking increase from the previous year, when 26% of new provisions restricted abortion. The 92 new abortion restrictions enacted in 2011 shattered the previous record of 34 adopted in 2005.²¹

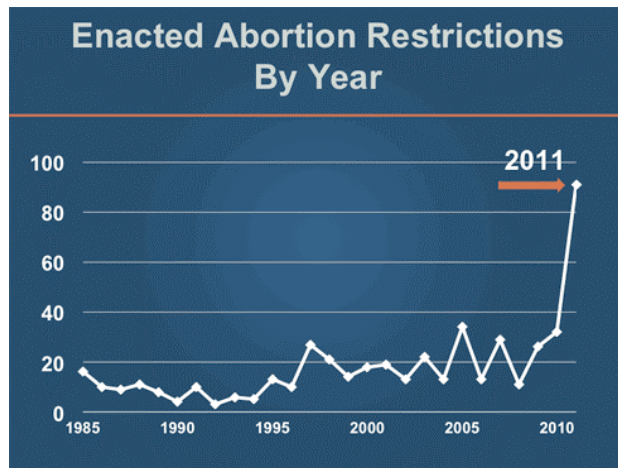
¹⁷ "An act to amend the statutes of the Child Abuse and Neglect Prevention Board":
<http://docs.legis.wisconsin.gov/2011/related/proposals/sb507>.

¹⁸ Michigan, a bill to end no-fault-divorce :
<http://www.legislature.mi.gov/documents/2009-2010/billintroduced/Senate/pdf/2010-SIB-1127.pdf>.

¹⁹ "Understanding the President's 'Healthy Marriage Initiative' ",
<http://www.heritage.org/research/reports/2004/03/understanding-the-presidents-healthy-marriage-initiative>.

²⁰ Center for Reproductive Law and Policy, <http://reproductiverights.org/en/our-issues/abortion>.

²¹ Guttmacher Report, <http://www.guttmacher.org/media/inthenews/2012/01/05/endofyear.html>.



The latest development concerns mandatory ultrasounds. Twenty states require abortion providers to conduct ultrasounds prior to the abortion. In Florida, for example, House Bill 1127 requires physicians to perform an ultrasound prior to an abortion and to have the woman look at the images and hear a detailed explanation of the image. She may decline, but must certify in writing that she refused to see the images or hear the heartbeat. The same type of law exists in Texas, the difference being that the ultrasound is not abdominal but trans-vaginal; in short, the woman must concede to rape if she wants to have a legal abortion in Texas. This disturbing and gruesome reality reminds one of the Romanian film, “Four Months, Three Weeks, Two Days” (Cristian Mungui, 2007), Palme d’Or Cannes, wherein so as to benefit from the services of an illegal abortionist, eerily named Mr. Bébé, two young teen age girls, one of whom is pregnant by her boyfriend, both have to have sex with the abortionist otherwise he refuses to carry out the procedure.

Taken together, these conservative Republican initiatives have resulted in widespread victories affecting lower-middle class and poor women throughout the United States. At present, 87% of US counties do not have a qualified doctor to perform abortions, keeping in mind that a third of all American women between the ages of 15 and 44 live in these counties; a consistent rise in the number both of unwanted births and self-inflicted abortions has been documented; and last but not least, the US has the highest rate of teenage pregnancy among all industrialized countries. Difficult indeed, when contemplating these realities, not to feel tempted to speak of a “war on women”, one that is openly touted and vibrantly pursued throughout the country in many states and districts, both on the legislative and judicial front.

The conservative assault

The “war” against women has also been evoked throughout the 2012 presidential and legislative election campaign. Indeed, issues relative to contraception and abortion have been at the forefront of this year’s debates. What explains the predominance of these topics and the oftentimes violent attacks of certain Republican candidates on the right to privacy in matters of sexuality and reproduction? In large part, the “hijacking” of the Republican party by Tea Party and conservative Christian groups.

Throughout the Republican campaign, beginning with Rick Santorum’s crusade against abortion and contraception during the primaries, all the way to Mitt Romney’s call for the defunding of Title X, probably the most coherent theme of the Republican party has been

its attack on privacy issues. The vile comments of the well-known radio host, Rush Limbaugh (10-15 million listeners per day) concerning Sandra Fluke, a student at the prestigious Georgetown university, calling her a “slut” because she testified before an (all-male) Congressional Committee in favor of reimbursing contraceptive use, to Republican Senator Todd Akins's “re-definition” of “legitimate rape” that he transformed into “forcible rape” to then argue that if “forcibly raped”, the woman's body would “shut down” and not become pregnant, all these declarations sit well with conservative Republicans and the Christian right who, according to many, have taken control of the Republican party.

Proof, according to these analysts, lies in Mitt Romney's newfound “pro-life” stance, a radical switch from his days as Governor of Massachusetts when he supported eliminating religious exemptions from contraceptive coverage. It was also a time when his wife made regular contributions to Planned Parenthood, and when he signed a bill in 2005 that expanded the number of people who received family planning including the “morning after pill” which must be taken within two days of unprotected sex and thus prevents the fertilized egg from settling into the uterine walls (not to be confused with the RU 486 pill). Today, Romney denounces using all forms of contraception, and when questioned on February 11th, 2012, he said he would support any measure that pursues the establishment of “personhood” for embryos and fetuses.²²

Insofar as health care is concerned the Romney/Ryan ticket wants to see the ACA repealed, this affecting millions of women, especially poor women and women from minority groups. Before the ACA was passed, 19 million American women between the ages of 18 and 64 had no health insurance. Women of color, making up 36.3% of all women in American, were a disproportionate 53.2% of the uninsured. In addition, and before “Obamacare”, 47 million women - made up of 5.1 million African-American women, 4.9 million Latino-American women, 2.5 million Asian-American women, 300,000 Native American women, and 800,000 other American women from minority groups - had to pay up front any and all OB/GYN preventive medical act such as mammograms, pap smears, contraception, diabetes-control tests during pregnancy and many other medical and pharmaceutical preventive medicine acts. The repeal of ACA would plunge these women back into that reality, and the vast majority would have to abandon certain forms of contraception that are too expensive and choose not to engage in specific preventive OB/GYN care.

For women's rights in general, and the right to privacy in particular, the 2008 election was a crucial one. Asked about his views of the judiciary, Republican candidate John McCain said, if elected, that he would nominate “strict constructionist” justices throughout the federal circuit, in other words, justices who abide by the original meaning of the Constitution, practice judicial restraint, and condemn any decision that participates in the construction from scratch of a fundamental right.

Advocates of a woman's right to “choose” trembled and were justified in doing so. If McCain had been elected, he might have been in a position to replace a “pro-choice” justice with a “pro-life” justice on the US Supreme Court, thus reversing the 5 to 4 majority

²² This doesn't prevent Romney from hanging onto to his stocks (holdings valued at around 1 million dollars) held in a Goldman Sachs Exchange Place Fund which includes several pharmaceutical companies - Watson Pharmaceuticals, Johnson & Johnson, Merk, Pfizer - all producers and sellers of various forms of contraception and abortifacients.

upholding *Roe* to a new 5 to 4 majority reversing it.²³ If that were to have occurred, the Court would not have declared abortion “illegal”, it would simply have done what the “pro-life” movement has adopted as a new strategy since *Webster* and *Casey*, i.e. give back to the states the entire responsibility for deciding whether or not abortion was legal in their state, and this in virtue of the Tenth Amendment.²⁴

Indeed, this line of approach argues that a “right to privacy” in matters of abortion - and for some, contraception also - does not exist in the Constitution and determining the legality or not of these issues belongs to the states. Under this scenario, a well-documented study by the non-profit, non-partisan Center for Reproductive Law and Policy indicates that out of the 50 states, 21 are prepared to totally prohibit any recourse to abortion - through already established “Trigger Laws”, the reversal of *Roe* being the trigger pulled to allow for the immediate implementation of these already drafted laws - and 9 others are prepared to severely limit access to abortion.²⁵

Where have the feminists gone?

The question often asked is “what is the feminist movement doing about this”? Since *Webster* and *Casey*, feminists have been struggling in a constant reactive and not proactive mode, and are divided. Not a very conducive context for success. Indeed, the term “feminist movement” is erroneous; throughout the history of American feminism, there has never been a unique, homogeneous group of activists. And beginning in the 1970s, as the Christian Right was flourishing, American feminists were at serious odds with each other.

The two largest feminist groups, one can easily speak of “institutions” or mainstream/institutionalized feminist groups, were - and are - NOW (National Organization for Women) and NARAL (National Abortion Rights Action League). They both supported and fervently defended the principle of a “right to privacy” as elaborated in *Griswold* (1965) and *Roe* (1973) relative to the choice to NOT procreate. According to these groups, women's emancipation began first and foremost by removing the chains of unwanted childbirth from women. This could only be achieved by demanding an unconditional right not to procreate. They therefore observed with dismay and publicly denounced newly-founded more radical feminist groups such as the CESA (Committee to End Sterilization) and the CARASA (Committee for Abortion Rights and Against Sterilization Abuse) who were, according to NOW and NARAL, thoroughly undermining the recent fragile successes embodied in *Griswold* and *Roe* which laid out a constitutionally-protected “right to privacy” in matters of non-procreation.

CESA and CARASA were not against the “right to privacy” *per se*, they simply wanted to go further and demonstrate, among other things, that the privacy principle itself was not accessible to all, as witnessed by poor women in New York who were victims of forced or

²³ Since the beginning of his Administration, Obama has nominated two justices to the US Supreme Court, but the 5 to 4 in favor of *Roe* has not changed seeing that he replaced “pro-*Roe*” justices with the same. He has, though, been able on the national circuit to reverse certain District and Appeals court from being conservative strict constructionist majority courts to more flexible interpretative ones.

²⁴ William Saletan, *Bearing Right: How Conservatives Won the Abortion War*, Berkeley, University of California Press, 2004.

²⁵ Center for Reproductive Law and Policy, “What if *Roe* Fell? The State-by-State Consequences of Overturning *Roe v. Wade*”, http://reproductiverights.org/sites/default/files/documents/bo_whatifroefell.pdf.

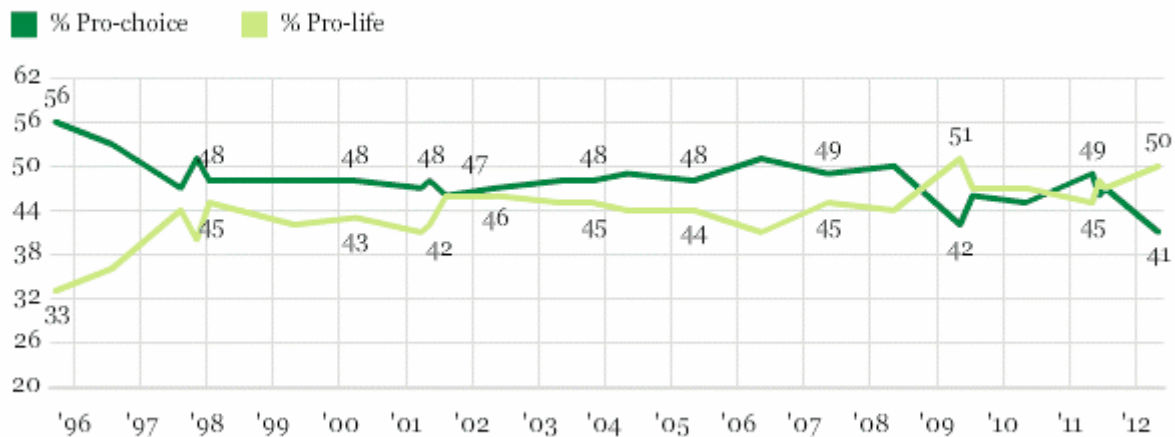
coerced sterilization. They also regrouped feminists who argued that abortion rights were not the *nec plus ultra* for all women, that some feminist women preferred to fight not for the right to not have children, but for a society that allowed women to have children when they wanted with the guarantee that their children benefit from good housing, health care and quality education. These feminists of the mid 70s/early 80s - and not mainstream feminists - became the framers of what we call today “reproductive rights”, culminating in today's Reproductive Justice Movement.

The victories of the Christian right, which firmly stands as a homogeneous group on issues involving women, are in large part due to the splintering of US feminists. Yet, on the one hand, mainstream feminists are right. Consider the fact that since 1973, the US Supreme Court has decided in almost 30 abortion cases, demonstrating the role it plays in protecting this privacy issue. It is argued by mainstream feminists that if *Roe* were to be reversed, the impact would be as resounding as the *Bush v. Gore* decision relative to the 2000 election: one vote by one Supreme Court Justice could change the course of history for women throughout the country as did one vote by one Justice culminating in the election of George W. Bush change the course of history not only for Americans but for many foreign nations.

In addition, and in underlying a worrisome shift, mainstream feminists point to a recent Gallup poll. For the second time since 1996 (Gallup has been following the issue since 1973), public opinion now defines itself as more “pro-life” than “pro-choice” (51% versus 42% in 1996, 50% versus 41% end of 2011).²⁶

With respect to the abortion issue, would you consider yourself to be pro-choice or pro-life?

Trend from polls where pro-life/pro-choice was asked after question on legality of abortion



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This “change of heart” coupled with recent research on the newfound “power” of the Supreme Court reinforces mainstream feminists' focalization on abortion. They point to work carried out by Professor Professor Richard Hasen (University California at Irvine) which demonstrates that “Congress is overriding the Supreme Court much less frequently in the last decade ... The number of overrides has fallen to almost none.” Other researchers have tended to agree with Hasen's analyses, and to conclude with him that this has given the Supreme

²⁶ "Pro-Choice" record low, Gallup Poll, <http://www.gallup.com/poll/154838/Pro-Choice-Americans-Record-Low.aspx>.

Court significantly more power and Congress significantly less. As one other researcher writes, “The assumption has long been that when the court interprets a federal statute, Congress can always come back and fix it... Now the Court's decisions are likely to be the last word, not the first word on what a statute means”.²⁷ Not only does this mean that the Supreme Court, an unelected body of persons, has more power, but that it can be more easily privy to ideological decision-making rather than judicial interpretation. That is, in any event, the fear of mainstream feminist groups and other defenders of *Roe v. Wade*, which has been hanging on by a thread for years with just a one-person majority.

This is where feminists active in the Reproductive Justice Movement step in, and they too are correct in their analyses.²⁸ Focusing on a constitutional “right to privacy” as being the only way to guarantee women's emancipation was wrong from the start. It amounted to simply reflecting the individualistic facet of contemporary democracies, neglecting as such the fact that there is no such thing as a monolithic, homogeneous group of persons called “women”. Proclaiming a “right to privacy” without providing access to such a right simply “privatizes” decisions, thereby “legitimizing a minimalist state response” to the problems of women. This in turn ignores the realities of marginalized groups, made up of both men and women, who need greater community and state assistance with a variety of demands, including that of becoming or not a parent. Hence, argue spokespersons of the Reproductive Justice Movement, if mainstream feminists truly want to guarantee equal rights for all women, rich and poor, they should leave the lofty and hallowed halls of the Supreme Court, roll up their sleeves, and go back on the field, back to inner-city clinics and schools, back to rural communities. It is only through this process that the concept of “choice” or that of a “right to privacy” can be seen for what it truly is.

“Choice does not exist in a vacuum” is the motto of the Reproductive Justice Movement. Indeed, “choice” and/or privacy is a function of the intersections of race, class, sexuality and other markers of difference that affect the ability, not only for individuals, but for entire communities to make decisions and act freely. As such, linking reproductive rights to other social justice issues such as poverty, economic injustice, welfare reform, housing, and environmental justice among others is the sole manner to counteract the assaults on women and their rights by the Christian right and conservative Republicans, now and in the future.

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²⁷ Adam Liptak, "In Congress's Paralysis, a Mightier Court", http://www.nytimes.com/2012/08/21/us/politics/supreme-court-gains-power-from-paralysis-of-congress.html?_r=0.

²⁸ Robin West, "From Choice to Reproductive Justice", *Georgetown Law Faculty Publications*, 2009. Download at <http://scholarship.law.georgetown.edu/facpub/23/>.