

MEMO

Analysis of Republican National Committee Platform Position and Proposals on Abortion

July 18, 2016

Every four years, the Republican National Committee writes the Republican Party platform, which gets voted on and approved by delegates at the Republican National Convention. In 2012, the RNC described its platform as “a statement of who we are and what we believe as a Party and our vision for a stronger and freer America.”¹ Each Republican Party platform approved since 1984 has endorsed anti-abortion proposals — including calling for laws, policies, and constitutional amendments that would ban abortion altogether. The 2016 platform continues that trend in stating, “We assert the sanctity of human life and affirm that the unborn child has a fundamental individual right to life which cannot be infringed.”²

This memo analyzes the anti-abortion proposals in the Republican platform, looking back over the last three decades at how the party’s position has consistently sought to make abortion both illegal and inaccessible. Through an explanation of the most likely consequences of the human life amendment, along with other anti-abortion proposals in the platform, this memo outlines how, if the Republican platform’s historic position on abortion were to become law, abortion would become illegal (in other words, a crime), which could lead to women and doctors being prosecuted, punished, and imprisoned.

This memo includes analysis of:

- The implications of a “human life amendment” establishing a fetus as a person
- RNC’s shifting position on what happens to women who have abortions
- Prosecution and punishment of women and doctors, including charges of feticide
- Other restrictions on abortion, including clinic closures and insurance coverage bans

1. Human Life Amendment

Since 1984, the RNC platform has called for a human life amendment to the Constitution.³ The 2016 platform continues that trend by stating:

We support a human life amendment to the Constitution and endorse legislation to make clear

¹ 2012 Republican Platform Preamble. Available at: <https://www.gop.com/platform/preamble/>.

² 2016 Republican Platform. Available at: <https://www.gop.com/platform/we-the-people/>.

³ The 1984, 1988, 1992, 1996, 1998, 2002, 2006, and 2012 Republican platforms contained nearly identical language. See <http://www.presidency.ucsb.edu/platforms.php>.

*that the Fourteenth Amendment’s protections apply to unborn children.*⁴

There are many versions of the human life amendment that have been proposed in Congress over the years, but most would establish a fetus as a “person” throughout pregnancy under the Fourteenth Amendment. Such an amendment could grant fetuses a constitutional “right to life” — and because the platform further states that right “cannot be infringed,” state and federal governments would be required to respect it. Although *Roe v. Wade* established that the Constitution grants women the right to choose to terminate a pregnancy, a human life amendment would in effect overrule that decision: Government could then immediately ban all abortions — and both the woman having an abortion and the doctor providing one could be subject to prosecution and punishment, including the possibility of jail time.

2. Language on What Happens to Women Who Have Abortions

Starting in 2008 and continuing through 2016, the RNC platform has included language suggesting a vague obligation to some women who might be impacted by its call for abortion to be made illegal, stating:

*We all have a moral obligation to assist, not to penalize, women struggling with the challenges of an unplanned pregnancy.*⁵

It’s worth noting that this reflects a shift to an *even more narrow and uncompromising position* than that found in the platforms adopted between 1984 and 2004, which tacitly acknowledged the prospect that the human life amendment and related measures endorsed in the platform could result in criminalizing women who have abortions. Those earlier platforms stated:

*Our goal is to ensure that women with problem pregnancies have the kind of support, material and otherwise, they need for themselves and for their babies, not to be punitive towards those for whose difficult situation we have only compassion. We oppose abortion, but our pro-life agenda does not include punitive action against women who have an abortion.*⁶

Never has the platform addressed the central inconsistency of how, if a fetus is granted a “fundamental [constitutional] individual right to life which cannot be infringed,” a woman who terminates her

⁴ 2016 Republican Platform. Available at: <https://www.gop.com/platform/we-the-people/>.

⁵ Political Party Platforms. The American Presidency Project. Available at: <http://www.presidency.ucsb.edu/ws/?pid=78545>; 2016 Republican Platform. Available at: <https://www.gop.com/platform/we-the-people/>.

⁶ Political Party Platforms. The American Presidency Project. Available at: <http://www.presidency.ucsb.edu/ws/index.php?pid=25845>.

pregnancy could avoid prosecution under any number of laws that would then apply.⁷ Nor has it addressed the implications of punitive actions against doctors that would result.⁸

With the language originally adopted in the 2008 platform, the RNC also removed its earlier nod toward concern for any women who might be directly affected by the policies and positions it endorses that would make abortion illegal and inaccessible.

The “moral obligation” it expresses is even weaker than the previous language because it no longer explicitly addresses “punitive action against women who have an abortion.” This diluted language is further problematic because it does not address a woman who has decided to deal with her “unplanned pregnancy” by *having an abortion*, nor does it extend to a woman with a “planned pregnancy” who has decided to terminate. As a result, this vague “moral obligation” would still allow the RNC to fully support any number of policies that would penalize, criminalize, or even jail a woman for having an abortion.

Language of the type found in the RNC platform since 1984, which carries through into 2016, fails to protect women from the possibility of prosecution and jail time were the platform’s positions to become the law of the land. Moreover, recent events in some of the states that have aggressively advanced policies applauded in the platform (see section 4) demonstrate that the prospect of women being prosecuted and jailed for abortion is neither speculation nor hyperbole.

3. Current Examples of Prosecution and Punishment of Women and Doctors

In recent years, there has been a rise in arrests and prosecutions of women related to abortion.⁹ Since 2004, at least 17 people have been arrested or convicted in connection with alleged self-induced abortion.¹⁰

As noted by the Guttmacher Institute:

Despite claims from antiabortion advocates and lawmakers that abortion restrictions are intended to only criminalize providers of abortion care, some prosecutors have exercised their discretion under current state laws to penalize women who end their pregnancies on their own.

⁷ The SIA Legal Team. The Problem. Berkeley Law. Available at: <https://www.law.berkeley.edu/wp-content/uploads/2016/01/SIA-Legal-Team-Infographic-on-Self-Induced-Abortion-.pdf>.

⁸ Erik Eckholm. Oklahoma Passes Bill That Would Subject Abortion Doctors to Felony Charges. New York Times. Available at: <http://www.nytimes.com/2016/05/20/us/oklahoma-bill-abortion-doctors.html>.

⁹ Jill E. Adams, JD, and Melissa Mikesell, JD. Primer on self-induced abortion. Berkeley Law. Available at: <https://www.law.berkeley.edu/wp-content/uploads/2016/01/SIA-Legal-Team-Primer.pdf>.

¹⁰ The SIA Legal Team. The Problem. Berkeley Law. Available at: <https://www.law.berkeley.edu/wp-content/uploads/2016/01/SIA-Legal-Team-Infographic-on-Self-Induced-Abortion-.pdf>.

Moreover, these laws are even being used to pursue women who are merely suspected of having self-induced an abortion, but in fact had suffered miscarriages.¹¹

According to the SIA Legal Team, based at the University of California at Berkeley, as many as 40 laws are potentially violated when a woman ends her own pregnancy with the support of an advocate or caregiver. For the woman herself, this could include being charged with feticide, attempted feticide, self-abortion, or attempted self-abortion.¹² Advocates for the woman are at risk of charges, as well. An abortion hotline volunteer or abortion doula who advises a woman about safe and effective ways to end a pregnancy outside of the formal health system could face charges, including the unauthorized practice of medicine. In fact, a friend who offers support such as babysitting a woman's other children while the woman self-induces an abortion could be charged as an accomplice.¹³

Health care professionals are also at risk of prosecution. In some states, when a woman confides in a medical professional that she has taken abortion pills, the medical professional could face charges for failing to report the abortion, as well as charges related to tampering with evidence or obstruction of justice.¹⁴

In a number of recent cases, women attempting to self-induce abortion and their advocates and have been charged, prosecuted and — in some cases — jailed:

- In Indiana, Chinese immigrant Bei Bei Shuai was prosecuted for murder and attempted feticide, spending 178 days in jail, after she attempted suicide while pregnant.¹⁵
- Another Indiana woman, Purvi Patel, was convicted of feticide and neglect of a dependent, receiving a 20-year jail sentence for ending her pregnancy.¹⁶
- Kenlissia Jones was charged with murder and jailed without bond in Georgia for ordering pills online to terminate her pregnancy; the murder charge was later dropped, but a misdemeanor drug charge was maintained.¹⁷

¹¹ Andrea Rowan, Prosecuting Women for Self-Inducing Abortion: Counterproductive and Lacking Compassion, Guttmacher Policy Review, Volume 18, Issue 3, <https://www.guttmacher.org/about/gpr/2015/09/prosecuting-women-self-inducing-abortion-counterproductive-and-lacking-compassion>.

¹² The SIA Legal Team. The Problem. Berkeley Law. Available at: <https://www.law.berkeley.edu/wp-content/uploads/2016/01/SIA-Legal-Team-Infographic-on-Self-Induced-Abortion-.pdf>.

¹³ The SIA Legal Team. The Problem. Berkeley Law. Available at: <https://www.law.berkeley.edu/wp-content/uploads/2016/01/SIA-Legal-Team-Infographic-on-Self-Induced-Abortion-.pdf>.

¹⁴ The SIA Legal Team. The Problem. Berkeley Law. Available at: <https://www.law.berkeley.edu/wp-content/uploads/2016/01/SIA-Legal-Team-Infographic-on-Self-Induced-Abortion-.pdf>.

¹⁵ David Crary. As clinic access tightens, group touts pregnancy-ending drug. Associated Press. Available at: <http://bigstory.ap.org/article/7ddb0c2af774a71b9cb714c5f0d211f/clinic-access-tightens-group-touts-pregnancy-ending-drug>.

¹⁶ Irin Carmon. Court to Hear Appeal From Purvi Patel, Convicted of Feticide. NBC News. Available at: <http://www.nbcnews.com/news/asian-america/court-hear-purvi-patel-feticide-neglect-appeal-n578726>.

- In Tennessee, Anna Yocca was originally charged with attempted murder and was later arraigned on charges of aggravated assault for attempting to end her pregnancy.¹⁸
- Jennie Linn McCormack was charged with self-terminating her pregnancy in Idaho, a crime punishable by up to five years in prison.¹⁹
- And in Pennsylvania, Jennifer Whalen was given a 9-to-18-month sentence for ordering abortion pills for her 16-year-old daughter.²⁰

As for doctors, if abortion were made illegal under a human life amendment, then providing a high-quality, safe abortion in a medical setting could be treated as a felony. Indeed, a bill passed by the legislature in Oklahoma this year would “effectively ban abortions by subjecting doctors who perform them to felony charges and revoking their medical licenses — the first legislation of its kind.”²¹

4. Endorsement of An Expansive Array of Restrictions on Abortion

Over the last 30 years, the Republican Party platforms have endorsed a growing number of restrictions on abortion. The 2016 party platform states:

*We also salute the many States that have passed laws for informed consent, mandatory waiting periods prior to an abortion, and health-protective clinic regulation.*²²

Since *Roe v. Wade*, elected officials in the states have passed more than 1,000 laws that restrict abortion access. These laws burden women with unnecessary waiting periods, medically inaccurate information about abortion, and unconstitutional clinic regulations that purport to improve women’s health but instead close clinics.²³ The cumulative effect of these types of restrictions on access to abortion is to push this option out of the reach of millions of women, particularly low-income women and women of color.

¹⁷ David Crary. As clinic access tightens, group touts pregnancy-ending drug. Associated Press. Available at: <http://bigstory.ap.org/article/7ddb0c2af774a71b9cb714c5f0d211f/clinic-access-tightens-group-touts-pregnancy-ending-drug>.

¹⁸ Tennessee woman accused of trying to self-abort pleads not guilty. WCMH-TV. Available at: <http://nbc4i.com/2016/03/15/tennessee-woman-accused-of-trying-to-self-abort-pleads-not-guilty/>.

¹⁹ Mark Joseph Stern. A Quiet Victory. Slate. Available at: http://www.slate.com/articles/double_x/doublex/2015/06/jennie_linn_mccormack_case_court_strikes_down_idaho_s_abortion_laws.html.

²⁰ Emily Bazelon. A Mother in Jail for Helping Her Daughter Have an Abortion. New York Times Magazine. Available at: <http://www.nytimes.com/2014/09/22/magazine/a-mother-in-jail-for-helping-her-daughter-have-an-abortion.html>.

²¹ Erik Eckholm. Oklahoma Passes Bill That Would Subject Abortion Doctors to Felony Charges. New York Times. Available at: http://www.nytimes.com/2016/05/20/us/oklahoma-bill-abortion-doctors.html?_r=0.

²² 2016 Republican Platform. Available at: <https://www.gop.com/platform/we-the-people/>.

²³ Whole Woman’s Health v. Hellerstedt, 579 U.S. ____ (2016).

a. “Informed Consent” and Mandatory Waiting Periods

As noted above, in recent years, the RNC platform has explicitly endorsed laws that require “informed consent” and mandatory waiting periods prior to an abortion. In accordance with the party’s platform, anti-choice state legislators have passed a myriad of laws that, under the guise of “informed consent” seek to dissuade a woman from getting an abortion by forcing doctors to lie to her about abortion and delaying her access to medical care.

Thirty-five states require that women receive counseling before an abortion is performed. Many states also dictate specific information that a woman must be provided, including written materials.²⁴

The misnomer “informed consent” masks the reality of laws that interfere in the relationship between a doctor and patient and often require doctors to lie to their patients. Seventeen states force doctors to give women medically inaccurate information, such as that abortion causes breast cancer.²⁵ These laws put health care providers in an ethical quandary and jeopardize a woman’s right to receive high-quality, evidence-based medical care.

The RNC’s position on informed consent is further at odds with polling showing that 94 percent of voters want a woman’s abortion experience to be informed by medically accurate information. Voters overwhelmingly support policies that allow health care providers to care for patients based on their best medical expertise without interference from politicians.²⁶

In 27 states, a woman must wait 24-72 hours before having an abortion. In about half of these states, a woman must make multiple, medically unnecessary trips to her provider. These laws serve only to delay a woman, pushing abortion further out of reach.²⁷ For women traveling long distances for an abortion, the delay poses additional cost burdens related to travel, lodging, time off from work, and child care for any children she may have. Further, when coupled with the shortage of abortion providers in many states,²⁸ which has been exacerbated by state legislatures imposing medically unnecessary regulations that are closing clinics, the resulting delays can stretch into a week or more.

b. “Health-protective clinic regulations”

²⁴Counseling and Waiting Periods for Abortion. Guttmacher Institute. Available at:

<https://www.guttmacher.org/state-policy/explore/counseling-and-waiting-periods-abortion>.

²⁵An Overview of Abortion Laws. Guttmacher Institute. Available at: <https://www.guttmacher.org/state-policy/explore/overview-abortion-laws>.

²⁶Analysis of Voters’ Opinions on Abortion Restrictions and Affirmative Policies. National Institute for Reproductive Health. Available at: <http://www.nirhealth.org/2016-poll/>.

²⁷An Overview of Abortion Laws. Guttmacher Institute. Available at: <https://www.guttmacher.org/state-policy/explore/overview-abortion-laws>.

²⁸Abortion Incidence and Service Availability In the United States, 2011. Guttmacher Institute. Available at: https://www.guttmacher.org/sites/default/files/article_files/abortion_incidence_in_the_united_states_2011.pdf.

The “health-protective clinic regulation” the RNC platform has endorsed refers to what are commonly known as Targeted Regulation of Abortion Provider (TRAP) laws. The Guttmacher Institute defines TRAP laws as “strict regulations on abortion clinics, beyond what is necessary to ensure patients’ safety.”²⁹

According to the Guttmacher Institute, 24 states currently have TRAP laws or policies that regulate abortion providers; twenty-two states have onerous licensing standards, many of which are comparable or equivalent to the state’s licensing standards for ambulatory surgical centers; and 14 states place unnecessary requirements on clinicians that perform abortions.³⁰

On June 27, the Supreme Court struck down two TRAP restrictions in Texas as unconstitutional. The court held by a 5-3 majority that both the admitting privileges and ambulatory surgical center requirements in Texas’ HB2 law constitute an undue burden on women that infringes on their constitutional right to access safe, legal abortion.³¹ The majority in *Whole Woman’s Health v. Hellerstedt* rejected Texas’s thinly veiled attempt to use medically unnecessary laws to jeopardize women’s access to abortion.³²

Bans on Insurance Coverage for Abortion

Another consistent proposal in Republican platforms since 1984 is opposition to insurance coverage for abortion.³³

According to the Guttmacher Institute, 10 states have laws in effect restricting insurance coverage of abortion in all private insurance plans written in the state; twenty-five states restrict abortion coverage in plans offered through the insurance exchanges; and 21 states restrict abortion coverage in insurance plans for public employees.³⁴

²⁹ Targeted Regulation of Abortion Providers. Guttmacher Institute. Available at: https://www.guttmacher.org/sites/default/files/pdfs/spibs/spib_TRAP.pdf.

³⁰ Targeted Regulation of Abortion Providers. Guttmacher Institute. Available at: <https://www.guttmacher.org/state-policy/explore/targeted-regulation-abortion-providers>.

³¹ *Whole Woman’s Health v. Hellerstedt*, 579 U.S. ____ (2016).

³² In the wake of Court’s decision, Alabama’s attorney general halted his state’s appeal of a decision finding a TRAP law unconstitutional. One day later, the Supreme Court refused appeals by Mississippi and Wisconsin to reinstate similar laws in those states..Amber Phillips. Three states’ abortion laws just fell thanks to the Supreme Court. These states could be next. Washington Post. Available at: <https://www.washingtonpost.com/news/the-fix/wp/2016/06/27/how-many-states-could-see-their-abortion-restrictions-struck-down-after-the-supreme-courts-big-ruling/>.

³³ For instance, the 2012 platform states, “We oppose using public revenues to promote or perform abortion or fund organizations which perform or advocate it and will not fund or subsidize health care which includes abortion coverage.”

³⁴ Restricting Insurance Coverage of Abortion. Guttmacher Institute. Available at: <https://www.guttmacher.org/state-policy/explore/restricting-insurance-coverage-abortion>.

The federal Hyde Amendment, in effect since 1977, bans Medicaid coverage of abortion, and 32 states follow this federal standard of banning coverage of abortion in most cases (typically only if a woman's life, but not her health, is at risk or in the case of rape or incest).³⁵ As of the last available data, women and girls made up a third of all Medicaid beneficiaries, and there were 13.5 million women of reproductive age enrolled.³⁶ These women are subject to the Hyde Amendment, and studies show that when policymakers place severe restrictions on Medicaid coverage of abortion, it forces one in four poor women seeking an abortion to carry an unwanted pregnancy to term.³⁷ Denying this coverage to a woman already living paycheck to paycheck can push her deeper into poverty, and studies show that a woman who seeks an abortion but is denied one is more likely to fall into poverty than one who is able to get an abortion.³⁸

³⁵ State Funding of Abortion Under Medicaid. Guttmacher Institute. Available at:

<https://www.guttmacher.org/state-policy/explore/state-funding-abortion-under-medicaid>

³⁶ <http://kff.org/womens-health-policy/issue-brief/medicaid-and-family-planning-background-and-implications-of-the-aca/>

³⁷ Henshaw SK et al., Restrictions on Medicaid Funding for Abortions: A Literature Review, Guttmacher Institute, 2009. Available at <http://www.guttmacher.org/pubs/MedicaidLitReview.pdf>.

³⁸ Foster DG et al., Socioeconomic consequences of abortion compared to unwanted birth, abstract presented at the American Public Health Association annual meeting, San Francisco, Oct. 27–31, 2012. Available at <https://apha.confex.com/apha/140am/webprogram/Paper263858.html>.