

‘WOMEN DESERVE BETTER:’ PRO-WOMAN ISSUE FRAMING OF
REGULATORY ABORTION POLICY IN THE STATES

By

AMANDA M. ROBERTI

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Dr. Cynthia Daniels

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ABSTRACT OF THE DISSERTATION

‘Women Deserve Better:’ Pro-Woman Issue Framing Of Regulatory Abortion Policy
In The States

By AMANDA ROBERTI

Dissertation Director: Dr. Cynthia Daniels

From 2009-2013, nearly 800 such bills were introduced across the United States, representing an enormous, and unprecedented, rise in regulatory abortion bills. Why did this rise occur and what social and political conditions made this rise possible? In this dissertation, I argue that such regulations gained so much traction because, unlike previous bills that focused on the protection of fetal life, these new efforts utilized a newly emergent pro-woman frame. By pro-woman frame, I mean language that is used to justify abortion restrictions as in “women’s best interest.” In this dissertation, I document and analyze the rise of the pro-woman frame. I do so by analyzing 794 introduced bills over a five-year time period. I argue that the pro-woman frame differs from previous justifications for abortion restrictions, which focused on the defense of fetal life and because of this, new space opened up for conservative antiabortion lawmakers to make claims that they are fighting for women. Additionally, this frame gave conservative women lawmaker the opportunity to connect their descriptive and substantive representation.

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Introduction

In June of 2013, Democratic women legislators stood on the floor of the Texas State Senate—one in pink sneakers—to filibuster an abortion bill that would shut down all but ten of the 42 abortion clinics in the state.¹ The bill, HB2, placed regulations on clinics and providers by forcing expensive structural changes to clinics, and mandating abortion providers have admitting privileges at nearby hospitals. The requirements of similar bills, called targeted regulations of abortion providers (TRAP), are often too onerous for clinics and doctors to comply with, and shut down as a result. The sponsors of HB2 asserted the objective of the bill was to protect women from unsafe abortions; they were looking out for ‘women’s best interests’. Despite the best efforts of the Democratic women lawmakers of Texas, the bill was ultimately passed and signed into law.

Subsequently the law was challenged in the US Supreme Court case, *Whole Woman’s Health v. Hellerstedt* (2016). During oral arguments in January 2016, activists on both sides of the abortion debate poured into D.C. challenging each other in the public space in front of the courthouse. Each had speakers, posters, flags, and balloons. Photographers from news outlets captured candid shots of impassioned activists mid-chant with their homemade signs. Signs from the antiabortion activist groups included the typical images of chubby babies as well as usual statements about the fetal heartbeat. Yet other signs could be seen blanketed throughout the crowd—they read “Protect Women, Protect Life.”

¹ <https://www.texastribune.org/2016/06/28/texas-abortion-clinics-have-closed-hb2-passed-2013/>

Lawyers arguing in favor of the law centered on the theme of protecting the health of women seeking abortions, as legislators had done in the Texas state legislature.

Justices Ginsburg, Sotomayor, and Kagan provided the most memorable critiques of that line of argument. Justice Ginsburg questioned the safety argument by pointing out that Texas women might need to travel to a neighboring state to get their abortions---states, like New Mexico, that had no such ‘safety’ measures in place. As she argued,

New Mexico doesn't have any surgical [standard]... requirement, and it doesn't have any admitting requirement. So if your argument is right, then New Mexico is not an available way out for Texas because Texas says to protect our women, we need these things. But send them off ... [to] New Mexico where they don't get it either, no admitting privileges, no ASC. And that's perfectly all right? Well, if that's all right for ... the women in the El Paso area, why isn't it right for the rest of the women in Texas? (*Hellerstedt*, oral argument, 3/2/16).

From 2009-2013, nearly 800 such bills were introduced across the United States, representing an enormous, and unprecedented, rise in regulatory abortion bills. Why did this rise occur and what social and political conditions made this rise possible? In this dissertation, I argue that such regulations gained so much traction because, unlike previous bills that focused on the protection of fetal life, these new efforts utilized a newly emergent pro-woman frame. The pro-woman framing of abortion holds that regulations are instituted in “women’s best interests.” Lawmakers have more discursive space to justify their antiabortion regulations when they are framed as pro-woman. Such framing allows lawmakers to disassociate themselves from antiabortion zealotry or extremism, and instead argue that abortion restrictions are *for* women and within the public good.

The “A” Word

Abortion is heavily legislated, stigmatized, bifurcated from other forms of healthcare. Abortion has become a war: the battleground, women’s bodies. Abortion is constantly on the radar of state legislators. According to NARAL, in the last 20 years, thousands of abortion restrictions have been introduced and more than 900 abortion laws were passed.² Prior to that, lawmakers had been less active on abortion regulations, but since its legalization in 1973, there has not been one year where state legislatures have passed fewer than three regulations, nationally.³

Abortion regulations have wide-reaching impacts on women. Because economics are so intricately tied in with women’s access to reproductive autonomy, barriers to access to abortion have direct and immediate impacts on women’s ability to participate in social and political life. When women cannot control their reproductive decisions, all other things—access to jobs with a living wage, economic wellbeing, and resources that make women full social and political citizens—are hindered. One important report, called “The Turnaway Study,” measured the effects of abortion regulations on women.⁴ Not only do women getting abortion cite economics as their main reason for abortion, but the numbers of women receiving abortion on public assistance is quite high: “42% of abortions in the United States occur among women living below 100% of the federal poverty level (FPL) and 69% occur among women below 200%,” (Roberts, et al., 2014, p. e212). Furthermore, women who were denied abortions had a significant economic gap: they were more likely to be on public assistance than women who were able to

2 <https://www.prochoiceamerica.org/laws-policy/state-government/>

3 <https://www.gutmacher.org/article/2016/01/last-five-years-account-more-one-quarter-all-abortion-restrictions-enacted-roe>.

4 The Turnaway Study was conducted by Advancing New Standards in Reproductive Health (ANSIRH) Research Group out of the University of San Francisco.

obtain an abortion by a difference of 32 points (76% denied; 44% obtained), as well as being more likely to live below the poverty level by 9 points (67% denied; 56% obtained), (Foster, et al., 2012).⁵ When women are unable to control reproductive decisions, they often revert back onto public assistance programs and into poverty.

Legislation on abortion speaks volumes about how lawmakers view women as citizens and as reproductive decision makers. A lawmaker's justifications for a particular bill illustrate the intentionality behind that policy decision and how they claim to represent their constituents' interests. Abortion is a contentious issue and a single-issue for many voters. In other words, many voters may choose their favored candidate based on their position on abortion. Therefore, abortion has numerous political consequences for lawmakers. This dissertation examines the stated "intent" of lawmakers who support regulatory abortion measures by analyzing the language used to justify abortion restrictions.

In this dissertation, I document and analyze the rise of a relatively new framing of abortion restrictions in the United States, the pro-woman frame. I do so by analyzing 794 introduced bills over a five-year time period. By pro-woman frame, I mean language that is used to justify abortion restrictions as in "women's best interest." I argue that the pro-woman frame differs from previous justifications for abortion restrictions, which focused on the defense of fetal life. To place this work in context, I will next examine the concept of issue framing as it informs my specific analysis of abortion politics.

⁵ These numbers are from paper entitled "Socioeconomic consequences of abortion compared to unwanted birth," which was presented at the American Public Health Association 2012 meeting.
<https://apha.confex.com/apha/140am/webprogram/Paper263858.html>

Why Framing?

Issue framing is a tool used by political elites at opportune times to shape the understanding of an issue with ultimate goal of dominating the discourse (Haider-Markel and Joslyn, 2001, p.521).⁶ For this study, it is helpful that frames are defined in a more nuanced way—as “discrete packages of meaning that can be “marketed” by movement actors, and ideologies, defined as socially imbedded and complex systems of values, norms and beliefs, usually with historical roots in ongoing power struggles,” (Ferree 2003, p. 308).⁷ This outlook on issue frames allows the exploration and discovery of the expansive historical and contextual roots of the pro-woman frame, involving interconnected societal and political institutions, political actors, and the various gendered power dynamics. (Ryan and Gamson, 2006). My study finds a historically located rhetoric that dominates the abortion discourse by relying on normative roles and understandings of women. In abortion politics, interest groups are particularly active on setting the tone or the frame of the discourse, and work their particular frames into model legislation. Antiabortion interest groups make it quite easy to collaborate with state level policymakers by providing this model legislation, and ways to frame it. Therefore, this study analyzes the use of particular frames by state lawmakers in introducing regulatory abortion bills.

Framing is a particularly useful angle from which to study abortion because words have immense power. Policies by nature tend to be complex, nuanced, and detailed: as Baumgartner and Mahoney (2008) explain, “no policy is substantively one-dimensional” (p. 436). Frames therefore can help “...shape individual understanding and opinion

⁶ See also Schattschneider (1960).

⁷ See also Oliver and Johnston (2005).

concerning an issue by stressing specific elements or features of the broader controversy, reducing a usually complex issue down to one or two central aspects” (Nelson, et al., 1997, p. 568).

Frames can have a great impact in three distinctive ways: 1) psychologically within the public; 2) policy outcomes; and, 3) representational claims-making. Cognitive linguist George Lakoff studied the impact that language, rhetoric, and frames can have on the general public.⁸ There is a deep psychological connection that people have with language; for those engaged in political discourse, language can be a formidable persuasive tool. The power of frames can be so persuasive to the general public, in fact, that people may even change their long-held beliefs on things they deeply value.⁹ Nelson, Clawson, and Oxley (1997) examine the way a dominant frame can influence the public’s perception on an issue. For example, if the Ku Klux Klan were to hold a rally in your hometown, that can be framed as either an issue of hate speech and therefore they should be banned, or free speech and therefore the rally should be allowed. In the Nelson, et al. study, even people who deeply disagreed with the racist beliefs and tactics of the Klan, if exposed long enough to the free speech frame, changed their mind on the right to rally issue. In competitive environments where frames can push against each other, one frame can emerge as a dominant frame, aided by who uses the frame and who gives it space to be absorbed (Chong and Druckman, 2007). The media has a particularly strong impact on priming frames, or allowing one frame to dominate an issue. However, even when one frame does not dominate, elites can fluidly shift frames towards particular audiences,

⁸ See *Don’t Think of an Elephant* (2014).

⁹ See also Sniderman and Theriault (2004).

making a stronger psychological connection to a particular group of people (Tarrow, 1998).

Frames can have a strong impact on policy outcomes as well. One particularly interesting study focused on the shift in framing around the death penalty. Baumgartner et al. (2008) examined the rise of media attention to DNA evidence and proof of innocent death row inmates. They assert that over the years an “innocence” frame emerged around the death penalty debate—one that had not been apparent before, where the dominant debate was in the morality of the death penalty. It was a shift that brought a new frame into the debate; death row inmates might be innocent, and therefore the state would be putting innocent people to death. The rise of this frame caused several states to overturn their laws on the death penalty, or at least suspend all practice.

Lastly, legislators use framing devices as rhetorical tactics to signal certain policy priorities and standpoints to their constituents. Likewise, lawmakers frame abortion in a way that speaks to their constituents about their priorities and beliefs. For example, using strong rhetoric towards drug offenders signals that a lawmaker is tough on crime and values the safety and security of their constituents and the communities in which they live. Lawmakers might even frame entire populations to advance legislation that targets those populations, in a way that is more palatable to their constituents. For example, welfare recipients during the welfare reform debate in the mid 90s were often framed as lazy and undeserving as a way to justify drastic changes to the welfare system.¹⁰

Schnieder and Ingram (1993) create a schema for how certain groups—mothers, veterans, immigrants, and criminals—are constructed through culture, reinforced by political

¹⁰ See Hancock (2004).

discourse, and targeted by policy. Much of the issue framing literature focuses on framing effects on the policy preferences of the general public (Druckman, 2001; Chong, 1996; Druckman, 2004; Nelson, 2004; Lau & Schleisinger, 2005; Knoll, Redlawsk & Sanborn, 2010), its effect on political knowledge (Brewer, 2003), and the reciprocal influence between the public, institutions, and political elites (Chong and Druckman, 2007).

This study highlights the existence of the pro-woman frame in antiabortion politics, and the implications the impact this existence has on the direction of abortion discourse generally. This study contributes to the framing literature, by specifically examining the *gendered* nature of the framing of abortion—the norms and assumptions about women and “women’s best interests” that are used by the most fervent legislative proponents of abortion restrictions.

Pro-Woman, Pro-Life

In this study I develop the concept of pro-woman framing of abortion regulations. Though a literature exists evidencing the pro-woman frame in antiabortion movements more generally, political scientists have yet to fully explore how this frame translates into legislation or how it impacts legislative behavior and rhetoric. A pro-woman framing of abortion is based on the argument that “instead of advancing women’s equality, abortion is actually harmful to women,” (Trumpy, 2014, p. 163). As I describe in detail in Chapter 2, the pro-woman frame represents a shift in the typical framing of abortion regulations.

Outline of Project

As the culmination of years spent exploring abortion politics and policies from a variety of angles, this project examines the under-studied issue of framing and legislative rhetoric in regulatory abortion policies in the states. I analyze how state level lawmakers use the pro-woman frame during a time period of unprecedented rise of abortion bills. This study opens up a litany of important scholarly considerations. At its core, this study explores the use of political framing generally; framing is a powerful way for political elites to control the discourse on an issue. Historically, pro-choice lawmakers, liberals, and Democrats, have claimed the domain of women's rights, whereas pro-life, conservative and Republicans have been seen as antiabortion and therefore anti-women's rights, (Adams, 1997). This study argues that this is precisely why the use of the pro-woman frame has become such a politically expedient position for Republican and conservative lawmakers to take. It re-defines what it means to act in women's best interests, and to support women's rights. It expands Republicans' voter base, reimagines their policy priorities, and potentially provides a corrective for Republicans' "women problem"—that is, the gender gap in voting along party lines.

Additionally, as a scholar of women and politics, I am continually asking how women lawmakers make a difference. As such, I study the use of the pro-woman frame by women lawmakers. I find that when women lawmakers invoke gender in this way, they are signaling their unique ability to not only descriptively represent their constituents, but to substantively represent women's interests as well. Even further, women lawmakers can assert that, because they are women, they are acting for their women constituents in meaningful ways.

I organize the project in the following way. In Chapter 2, I describe the legal and historical roots of protectionist policies that had the effect of discriminating against women. Such policies are important because they provide the backdrop for understanding the historical origins of the pro-woman framing of abortion. I review laws beginning from the well-known labor law case *Muller v. Oregon* (1908), which prohibited women from working in certain jobs or for certain hours, presumably due to their vulnerabilities and their duties in the home. While protectionist labor laws have since been overturned as unconstitutional forms of sex discrimination, this idea of “romantic paternalism,” I argue, continues in the form of protectionist abortion regulations.

In Chapter 3, I introduce the pro-woman frame. I operationalize the frame, describe my methodology and review the previous literature regarding the pro-woman frame. In this chapter, I also develop my definition of three secondary subset frames—protectionism, empowerment, and ignorance. These subsets add a level of substantive refinement to the current literature on abortion policy framing. Using these three subsets allows us to see the various forms that the pro-woman frame takes in abortion regulations. I then use my original database of 794 bills introduced during 2009-2013 to analyze the dynamics of the use of the pro-woman frame, including variables such as region, year, party, and bill success.

Chapter 4 analyzes the use of the pro-woman frame specifically by women lawmakers. For this chapter, I draw on the literature on the descriptive and substantive representation of women. Important questions emerge, such as which women *get* to speak for women, and what happens when women take on typically anti-woman policy standpoints. In this chapter I discuss the importance of what it means when women

lawmakers claim they are representing women's best interests while introducing regulatory abortion measures. I also examine the use of the pro-woman frame among Democratic women. I include an intersectional case study on Democratic women of color in Louisiana, who were particularly active and outspoken in their support of abortion regulations. I ask what happens when appeals for protectionism and empowerment come from women representatives whose historical background of actually needing protection from abuse, particularly from health care providers? As women of color were often excluded from "protected" classes of women who were discriminated against in the days of *Muller*, and disempowered to make their own decisions with regard to reproduction, this is a significant case to study.

In Chapter Five, I conclude with some predictions about the future of the pro-woman frame: Where we have recently seen it applied? Where it has been rejected? Where might it develop in the future? I also discuss the implications of its use by lawmakers, and what their rhetoric signifies to their constituents in both theoretical and realistic terms. Last, I suggest the multitudes of future directions for this research. As my study shows, this frame is in no danger of disappearing any time soon and might even become more entrenched in the discourse around abortion politics by political elites—both in elected office and outside elected office. As the pro-woman frame has made restrictions on abortion more politically palatable across gender and party lines, it is imperative to understand how this frame is deployed, when it is deployed, and what its effect might be on women.

Chapter 2: Framing and Gender-based Regulatory Policy

US Supreme Court Justice David J. Brewer wrote in the case of *Muller v. Oregon*, 208 U.S. 412 (1908):

Even though all restrictions on political, personal, and contractual rights were taken away, and she stood, so far as statutes are concerned, upon an absolutely equal plane with him, it would still be true that she is so constituted that she will rest upon and look to him for protection; that her physical structure and a proper discharge of her maternal functions -- having in view not merely her own health, but the wellbeing of the race -- justify legislation to protect her from the greed, as well as the passion, of man (422).

Such a justification for excluding women from working in particular occupational fields would seem extraordinarily archaic today. One might find themselves rolling their eyes at the word “protection.” Perhaps it is charmingly traditional, but certainly not for codification by the US Supreme Court in order to justify discriminatory policy. While this case has been overturned by a century of legal advancement in women’s rights, this dissertation argues that its protectionist foundation remains.

In this chapter I present a historical analysis of gender-based protectionist regulatory policies to show how regulatory pro-woman abortion policy is an extension of this long line of policies. These policies rely on normative assumptions of gender roles, and a conflation of biological sex and gender to justify their importance. Furthermore, these policies served to exclude women from the public sphere—participation in which is a necessary component of full citizenship. This chapter examines the history of the framing of regulatory abortion policies in order to establish a landscape of the frames, actors who perpetuated those frames, and the shift from fetal-centric to pro-woman framing. The chapter then reviews the historical grounding of the pro-woman frame in

policies ranging from labor laws of the early 1900s to women's exclusion from jury duty and the military.

The purpose here is to situate abortion policies in the realm of protectionist policies that have historically relied on antiquated gender norms and assumptions of biological capabilities. However, the last part of this chapter explores how the pro-woman frame goes beyond gender-based protectionism; in this frame, women's empowerment and feminist rhetoric are invoked to justify anti-choice abortion regulations. This raises several concerns and questions for scholars—some questions old, some new—namely: who gets to define feminist, what happens when conservative women make claims of being *true* feminists, and what are the implications of this rhetorical power grab on behalf of conservative women?

Framing Abortion

When I teach on the topic of abortion, I ask my students to close their eyes and think of an abortion protest: I ask that they think of images, slogans, and the central debate in question. Just as an exercise, it is extraordinarily helpful because it asks us to access the first impression of the abortion debate—the most commonly understood and visible in the US politic. Students almost always eagerly report slogans that include “abortion is murder,” they recall giant billboards or perhaps even vans painted with dismembered fetuses, and people praying outside of abortion clinics. In many ways, they are right—this the fetal personhood frame in action, and it is an extraordinarily powerful one. Politicians and antiabortion activists argue that they are the voice of helpless, innocent, unborn lives. It is a compelling message; however, it is not the only one out

there. The fetal personhood frame has more frequently had to share the stage with a new argument—one that is pro-woman.

Though abortion regulations currently are framed in numerous ways, depending on the type of regulation, the sponsor, among other variables, there have been two major frames involved in the abortion debate. One such frame focuses on the right to life of the fetus. Based in ethics morality, this frame situates the fetus as a person with rights separate from, and sometimes in conflict with, the woman. The other frame includes the woman's right to choose, or right to privacy, in her medical decisions. These frames are often used in opposition to each other, perhaps in one grand narrative that fetal rights are fundamentally opposed to women's rights. Though feminist scholars have deconstructed this false dichotomy, the fetal rights versus women's rights narrative still looms large as a quintessential in abortion debates.

Though this dichotomy persists, there has been a significant shift in the framing of abortion: who it hurts, who it helps, and who is in control when it comes to reproductive decision-making. The pro-woman frame situates abortion regulations as in women's best interests because abortion is inherently harmful for women. The pro-woman frame is transformative in its focus: it allows those who typically are seen by the public as opposed to women's rights to assert that they, in fact, do care about women. It usurps the feminist or liberal standpoint as the only one that is concerned for women. This is not to say that the fetal-centric frame has disappeared; to the contrary, it is still widely used. However, it exists in a space where, additionally, the language used now expresses concern for and focus on women. The emergence of the pro-woman frame is difficult to pinpoint though, Reingold, et al. (2015) collected data evidencing the pro-woman frame's

existence in 1997. Siegel (2008) however, notes that the political relevance of the frame grew from its use in the 2008 *Gonzales v. Carhart* decision.

Who Frames?

In the previous chapter I discussed how political elites use frames to control the discourse around an issue. In the case of abortion policy, social movement organizations from the antiabortion and pro-choice sides are at the forefront of the issue framing of abortion. These groups often compete for frame domination, and take part in counter-framing, or reactions to dominant issue frames (McCaffrey and Keys, 2000).

The pro-choice movement grew organically from the right to reform abortion laws, and eventually legalize abortion in the U.S. Groups such as the National Association for the Repeal of Abortion Laws (NARAL), which developed in the late 1960s (Mooney and Lee, 1995; Tribe, 1990; Luker, 1984) and the National Organization for Women (NOW) took up the abortion rights issue. These pro-choice groups waged an uphill battle—with abortion criminalized and stigmatized since around the 1910s, their battle was on the state level. Pro-choice groups used the imagery of back alley abortions to drum up support from the medical community, and bolster moral arguments that women were dying from illegal abortions. The American Law Institute (ALI) in 1959 set forth guidelines for states for repeal and reform laws, "...at the urging of Planned Parenthood," which largely included exceptions for abortion in the cases of rape, incest, the mental or physical health of the woman, and for fetal deformities (Nossiff, 2001, p. 468; Sauer, 1974; Karrer, 2011). In 1962, a beloved television star, Sherry Finkbine, was denied a therapeutic abortion of a deformed fetus after her condition became known in the media. The denial of her abortion mainstreamed the issue for many Americans and

gained their sympathy as she was seen as a perfect woman—she was a good mother, successful, and well known throughout the country (Condit, 1990). Finkbine’s predicament encapsulated much of the framing of the pro-choice movement at this time. The term “therapeutic abortion” was used widely to show how in some cases, abortion was a matter of public health.¹¹ Karrer (2011) noted that fetal deformities and thus demand for abortion rose during the mid-1960s rubella outbreak. Abortion rights slowly came into a new light.

As the state-by-state victories of abortion law repeals trickled in from states such as California, Mississippi, and, Colorado,¹² the pro-choice movement was emboldened and continued to push for national legalization as one of the issues of the women’s rights movement (Nossiff, 1998). Central to their claim that criminalized abortion was killing women were the doctors who could provide corroborating stories. Furthermore, feminists claimed that this was a larger issue of women’s autonomy to make decisions about her body. It should be noted, however, that pro-choice success in a state depended deeply on amenable institutions within that state. Nossiff writes that pro-choice activists in New York in 1965 cultivated a friendly relationship with Democrats in the state, even to the point where activists were invited to speak at Democratic clubs. They also formed important coalitions with other activist groups such as the ACLU (Nossiff, 2001).

Pro-choice groups did not go unrecognized, however, as counter-movements of antiabortion groups coalesced in the early 1960s. Around 1965, the Catholic Church began inserting itself into the abortion debate and morality issues. Catholic Conference

11 To be sure, therapeutic abortions were stratified along race and class lines. White, affluent women were often able to obtain therapeutic abortions from private doctors.

12 These three states were the first three to enact reforms. By 1973, 18 states in total had repealed or made reforms to their abortion laws (Mooney and Lee, 1995).

during the Vatican II asserted that abortion was an “unspeakable crime,” and tantamount to murder (Nossiff, 1998). This frame became firmly established throughout the antiabortion movement community. State religious groups were actively working with policymakers to oppose birth control and other reproductive issues. Maxwell (2002) notes that as reform attempts began to gain traction, pro-life student groups would participate in sit-ins in Planned Parenthoods. In 1968, the Pennsylvania Catholic Conference created a statewide coalition to oppose abortion law reform, resulting in what Nossiff (1998) deems the first antiabortion state group, the Pennsylvanians for Human Life. Other antiabortion groups formed around the same time: The National Right to Life Committee (1967), Women Concerned for the Unborn Child (1969), and Americans United for Life (1971).

Subsequent to the legalization of abortion in 1973,¹³ a variety of state-based groups formed around pro-life issues as “...part of a decentralized, mostly state-level attempt to block the liberalization of abortion laws,” (Ziegler, 2013, p. 237). Groups included American Citizens Concerned for Life (late 1970s), Concerned Women of American (1979), and Operation Rescue (1986). Interestingly, women’s groups such as Feminists for Life (1973) were also part of early antiabortion social movement organization, and though their approach was outside of the mainstream antiabortion movement framing, they were able to have some influence on the National Right to Life Committee to advocate for the dignity of unwed mothers (Ziegler, 2013). As noted below in detail, these groups, some religiously-based, framed the fetus as a child, and abortion as murder.

13 It should be noted that antiabortion activists existed pre-legalization as well. See Munson’s “The Making of Pro-Life Activists: How Social Movement Mobilization Works” (2010).

Both pro-choice and antiabortion organizations were active in the policy process in the wake of legalization of abortion in 1973, and provided much of the momentum behind introduction of bills across states. Their strategies for policy intervention and institutionalization of frames included drafting model legislation, lobbying state legislators, and writing amicus curie, among other indirect means such as gaining media attention, and protesting to influence the policy agenda and public opinion (Wleizen and Goggin, 1993). Additionally, research indicates that interest group activity on both sides of the debate spiked around important court cases on abortion. In totality, during the reform period of the 1960s up to the legalization of abortion, and certainly after, “abortion forces on both sides of the debate succeeded in placing abortion on the national agenda by creating several different abortion discourses and by institutionalizing them on the state and national levels through the legislatures and the courts” (Nossiff, 1998, p. 246). As such, I investigate the frames the antiabortion movement institutionalized in greater detail below.

Fetal Personhood: Fetal-Centric

A fetal-centric framing of abortion enjoyed dominance throughout antiabortion discourse since the advent of the legalization of abortion following *Roe v. Wade*, 505 US 833 (1973). Ferree et al. (2002) identify the fetal personhood frame as being rooted in the “...sacredness of human life. The fetus is an unborn child and abortion is, whatever the mitigating circumstances may be, the taking of a human life,” (p. 107). In this frame, the fetus is the primary concern of lawmakers and advocates, and the focus of legislation asserting that the fetus has an inherent right to life beginning at conception. Siegel (2008) writes that the post-*Roe* era antiabortion arguments largely portrayed the fetus as a

child victim; the culture of “life” rhetoric was strong and evident and films such as the *Silent Scream* (Petchesky, 1987), and used fetal images to ramp up its public perception as a child (Condit, 1990; Daniels, 1993). Even currently, right-to-life organizations pin the moral standpoint of their argument squarely on the idea that abortion is murder, and the fetus is a child (Trumpy, 2014). This is a powerful position to argue from. Fetal rights advocates could refer to religion and morality and argue that they are “rescuing” innocent, voiceless unborn children (Maxwell, 2002, p. 4). Advocates use pictures of born children to represent the fetus, or focus on certain parts of the fetus—feet, hands—that most resemble those of a born child (Condit, 1990). These tactics, reinforced by increasing use of ultrasound technology, served to personify the fetus and lent more credence to the idea that the fetus is a person with rights, and those rights are contrary to the woman’s rights (Taylor, 2000; Stabile, 1992).

Fetal personification often goes hand in hand with the idea of maternal-fetal conflict, or the pitting of fetal rights against women’s rights, made popular by anti-feminist activist and founder of the Eagle Forum, Phyllis Schlafly. Feminist scholars purport that the maternal-fetal conflict can be applied more widely than to rights conflicts; the maternal-fetal conflict can even apply to social value placed on women and fetuses. Again, technology plays a strong role here:

Our contemporary ability to visualize the fetus and to test its health and treat it like a patient allows us to imagine the fetus as a more-real person than the pregnant woman. The pregnant woman, drained of reality, increasingly becomes a dehumanized container whose only purpose should be to serve the fetus correctly... imagining the fetus as a perfect victim seems to require imagining the pregnant woman as a perfect villain. (Solinger, 2005, p. 235).

Though this conceptualization seems bleak, this frame is quite pervasive. Ferree et al. (2002) find significant use of the fetal rights frame throughout their study of US and German framing of abortion—occurring in almost half (48%) of their cases. (177). The fetal personhood frame still enjoys wide use throughout the antiabortion movement and in legislation. One need not look very far to see many examples; however, the fetal personhood frame does not exist in a vacuum, but it increasingly shares discursive space with the pro-woman frame and a religious frame.

Religion frame: The Sanctity of Life

Closely related to the fetal personhood frame is a distinctly religious frame. Scholars have delved deep into the heart of antiabortion social movement organizations to understand the role religion plays in forming their beliefs about abortion (Munson, 2008). To begin, the demographic characteristics of antiabortion activists include a majority of self-proclaimed religious individuals. In multiple studies on antiabortion activists, Catholics and Protestant evangelicals made up the majority of their samples (Granberg 1981; Luker, 1984; Jacoby, 1998). Munson (2008) and Maxwell (2002) both suggest that the demographics have shifted away from a movement that was once “almost certainly disproportionately female and Catholic in its early years;” however, Catholics remain disproportionately represented in the ranks,” (p. 24). This religious representation in demographic terms is informative of the religious frame. This frame is essentially fetal-centric with religious justifications; it holds that God created all life, including the unborn. Abortion, therefore would not only be murder, but would be an ultimate sin against God. The religious frame also connects abortion to a wider, overarching belief system: one that sees the country as headed in the wrong direction. Munson’s extensive

interviews with antiabortion activists revealed that some view abortion as “the natural, evil consequence of a fallen society” (2008, p. 6).

This frame is also used, though not exclusively, as a foundation for many of the conscience clauses seen in abortion policies. These policies state that if a healthcare provider has a personal or moral objection to abortion, they would not have to participate in the treatment of a patient who is seeking or has had an abortion. Ferree et al. (2002) find evidence of a religiously motivated “social morality” frame used by policymakers in the U.S. and Germany, however in neither country was it the dominant frame. Nevertheless, it is important to recognize the role of religious-based framing of abortion. Not only has religion had an impact on how abortion is framed in the movement, but antiabortion activists have had an impact on religion as well, as “[o]n the organizational level, individual pro-life activists and pro-life groups put pressure on clergy, congregations, and denominations to become more vocally and actively pro-life in their theologies, teachings and activities” (Munson, 2008, p. 9).

Pro-woman frame: Woman-focused

Social movement and legal scholars have identified the pro-woman frame as situating abortion as harmful to women, and that regulating or eliminating abortion would be in women’s best interests.¹⁴ It is a simple, direct, and highly effective frame extension; a frame that is “aimed at attracting new supporters by piggybacking on previously established frames that enjoy significant cultural and intellectual influence,” (Saurette and Gordon, 2015, p. 245). The “previously established frames” are those woman-protective frames described below, that would protect women from too much exposure to

¹⁴ In Chapter 3, I go into much further detail of the operationalization of the pro-woman frame.

activities in the public sphere. Additionally, the pro-woman frame piggybacks on feminism and the empowerment of women. Regulations on abortion are thus “frequently framed in terms of protecting women’s autonomy, choice, consent, and rights. They are presented as protecting women from coercion and from making poor decisions in the service of promoting their autonomy,” (Denbow, 2015, p. 97). A tension that scholars studying this frame have not quite come to make distinct is the pro-woman frame’s ability to at once hold women as autonomous decision-makers, and simultaneously lacking in autonomy. As theorized in this project, the pro-woman frame never quite situates women as having inherent autonomy, but instead assumes that autonomy needs to be granted by the state. “Women-centered discourse describes women facing an unplanned pregnancy as “confused and despairing” and thus lacking the rationality and autonomy required to make and implement the decision they know to be right and truly wish to make: to continue the pregnancy and become mothers,” (Cannold, 2002, p. 173 quoting Reardon, 1996, p. 10-14). It is this lack of acknowledgement of women’s inherent autonomy that sheds light on the underlying conceptualizations and constructions of women. Nevertheless, the pro-woman frame exists as a rhetorical tactic, with a very specific strategic value.

In its current form, the antiabortion advocates using the pro-woman frame seek to discredit the pro-choice movement and re-define women’s issues and standpoints: “The PWPL [pro-woman, pro-life] movement seeks to cast doubt on the notion—heretofore shared by actors on both sides—that the pro-choice movement is focused on the interests and choices of women and the pro-life movement is concerned with protection of fetal rights. It seeks to show that the pro-life position is more authentically pro-woman than

the pro-choice movement,” (Trumpy, 2014, p. 164). The pro-woman frame allows antiabortion advocates and lawmakers to gain at least symbolic ground in the abortion debate. Scholars studying this phenomenon ultimately find that the emergence of the pro-woman frame “...is the result of, and also results in, new political opportunities for the movement,” (Rose, 2011, p. 3). As described throughout this study, being able to maintain a policy position that has been largely painted as hostile to women, while treading in the same rhetorical pond as feminists and women’s rights advocates, allows antiabortion advocates and lawmakers to avoid the hostile label. However useful and pervasive the pro-woman frame is currently, it was not incorporated so smoothly by anti-choice elites.

History of the Shift in Framing: From Fetal-Centric to Pro-Woman

Antiabortion social movements were at the core of the re-framing, or frame transformation of abortion (Trumpy, 2014). In many ways, the emergence of the pro-woman frame in the antiabortion movement, though divisive, presented an opportune rhetorical tactic. Mainstream movement actors had largely resisted any other framing of abortion, especially a pro-woman frame, as they believed it was an “ungrounded distraction from the real moral stakes of the abortion debate” (Siegel, 2008, p. 1662). Even under the right-leaning Reagan administration, the Surgeon General, Everett Koop would not sign on to the pro-woman frame (Siegel, 2008; Joffe, 2009). As Munson (2008) and other scholars studying the antiabortion movement have noted, the movement can be fractured at times, or even at odds with itself, as quarrels and differing ideas over strategies and tactics bubble over within the movement and among leaders. In many

ways, the rise in dominance of the pro-woman frame only highlights the various divisions within the antiabortion movement, and the multitude of voices encompassed therein.

The post-*Roe* 1980s typified a persistence of fetal-centric frames: clinic protests and religiously motivated public displays were common tactics of the antiabortion movement. Gruesome depictions of aborted fetuses were used to shock or break through to the public, though did not always have such an intended outcome. The flailing and radical efforts of the antiabortion groups such as Operation Rescue, though they enjoyed particular success in terms of the number of protestors their events garnered (Maxwell, 2002, p. 74), were evolving into a specifically anti-woman slant. Their tactics and rhetoric "...often merged fetal-personhood arguments with intensely anti-woman arguments," which positioned abortion seekers as man-hating (Saurette and Gordon, 2015, p. 76). However, during the mid-80s and into the early 1990s, those extremist antiabortion activities hit a fever point. Violence against clinics, doctors, and staffers was all too common. In 1993, Dr. David Gunn and Dr. George Tiller were both shot—Dr. Gunn fatally. This level of violent extremism was not lost on the news media, and "[a]s the violence escalated, the antiabortion movement became perceived as violent, extremist, and [a] fanatical movement more and more... creating a significant public relations challenge for the movement." (p. 78).

Whether it was the violence within the movement (Saurette and Gordon, 2015), or their "...bewilderment at opinion polls showing that while a vast majority of people believe the fetus is a human being and/or that life begins at conception, they strongly support liberal abortion laws," (Cannold, 2002), antiabortion advocates sought to shift their frame. The advent of Crisis Pregnancy Centers also played a strong hand in shifting

the frame towards women. Crisis Pregnancy Centers (CPCs) are non-medical counseling centers where women facing unplanned pregnancy would get free ultrasounds and counseling largely to discourage abortion. The women working at these centers were antiabortion activists, and were really on the ground level interacting with women on a daily basis. By providing pre-abortion counseling, antiabortion activists could follow through on their pro-woman narrative and show a certain level of care for women who were facing unplanned pregnancy. Importantly, CPCs also offered post-abortion counseling, which forwards a very specific narrative—one that is central to the advancement of the idea that abortion hurts women (p. 174). In fact, in the late 1980s, antiabortion activist David C. Reardon had been conducting research on women who had abortions. Reardon authored several books, among them a book entitled *Aborted Women: Silent No More* (1987), which told stories of women who claim to have suffered from abortion (Rose, 2011, p. 11). Reardon thus coined the term “post-abortion syndrome” that would describe in pseudo-scientific terms the negative psychological and emotional effects after having an abortion.

To solidify this frame shift, Reardon founded the Elliot Institute for Social Sciences Research; an advocacy organization that helps publicize and further spread pro-woman, antiabortion rhetoric and arguments through newsletters (Rose, 2011, p. 11). This new frame proved to be extremely strategic, as antiabortion advocates,

... fused PAS [post-abortion syndrome] empirics and stories with traditions of gender-paternalist argument that justify restrictions on women’s agency as needed to protect women from coercion and free women to be mothers. However traditional in structure, this new protectionist argument was expressed in a quite contemporary idiom. As a political discourse designed to rebut feminist, pro-choice claims, [the pro-woman frame] came to internalize elements of the arguments it sought to counter—fusing the public health, trauma, and survivors

idiom of PAS with language of the late twentieth-century feminist and abortion-rights movement (Siegel, 2008, p.1669).

This was akin to fighting pro-choice advocates on their ground; using the woman as a central figure, the “...women-centered focus re-positions the anti-choice movement as the defenders (rather than the critics) of pregnant women who have had or are considering abortion,” (Cannold, 2002, p. 172).

The newly embraced pro-woman frame allowed antiabortion advocates to still assert that the fetus was a child, but also claim their concerns and compassion for women—a prospect that seemed much more politically auspicious. The strategic value of this frame was felt in nearly all aspects of abortion politics; in advocacy, in the courts and, as I show in this project, in legislation.

Courts and the Pro-Woman Frame

Several US Supreme Court cases had set the stage for the pro-woman frame to be used throughout the states in justifying regulatory abortion policies. Though the pro-woman arguments were not in the immediate forefront of these cases, the groundwork for future justifications was present. In *Planned Parenthood of Central Missouri v. Danforth*, 428 US 52 (1976), a case that summarily regulated abortion, pro-woman language was used in Justice Blackmun’s opinion. Among the seven separate provisions at question in *Danforth*, was a provision that stipulated that women’s consent must be “informed and freely given.” This provision was an early informed consent policy, and was found to be constitutional under the precedent set forth in *Roe v. Wade* just three years earlier.

Interestingly, the *Danforth* opinion contains this language, which would pop up not only in future cases—though to a greater degree—but verbatim in legislation in my database:

The decision to abort, indeed, is an important and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences. The woman is the one primarily concerned, and her awareness of the decision and its significance may be assured, constitutionally, by the State to the extent of requiring her prior written consent. (p. 67).

The opinion explains that informed consent is required of other medical procedures and this would be no different. Three out of the seven provisions were upheld in this case, the informed consent provision being one among the three. The other two included a viability definition, and a physician's reporting requirement.

Another case where pro-woman language appears is in *Planned Parenthood v. Casey*, 505 US 833 (1992), which famously upheld *Roe*, with caveats, but also allowed for further state intervention in reproductive decision-making. After considering the decision in *Danforth* before it, Justice O'Connor writes,

In attempting to ensure that a woman apprehend the full consequences of her decision, the State furthers the legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed. If the information the State requires to be made available to the woman is *truthful and not misleading*, the requirement may be permissible. (p. 882, emphasis mine).

Again, this consideration, and in some cases, this direct quote is used throughout the proposed legislation found in this database, and future cases such as *Gonzales v. Carhart*, 550 U.S. 124 (2008). In this quote, the Court was addressing the informed consent provision, which in the state of Pennsylvania had now evolved over the years to include mandating information about fetal development, as a direct expansion of Missouri's informed consent policy at issue in *Danforth*. Also noted in this quote is the standard that the information being given must be truthful and nonmisleading, a qualification that further enhances pro-woman framing. In other words, though the state can produce

materials on informed consent, and even go so far as to express a preference of childbirth over abortion, the materials had to at least be “truthful and nonmisleading” per *Casey*. However, it should be noted that studies have shown the information in current informed consent materials contain both false and misleading statements (Daniels, et al, 2016; Berglas et al., 2017; Richardson and Nash, 2006).

Siegel (2008) points to the pro-woman frame’s appearance in the US Supreme Court decision in the deeply fetal-centric case, *Gonzales v. Carhart* (2008) as being one of the more significant uses of the frame. Justice Kennedy famously, as quoted above, stated that the “partial birth abortion” ban at issue in that case was wholly constitutional as it was, among other reasons, within the duties of the state to protect women.

The State has an interest in ensuring so grave a choice is well informed. It is self-evident that a mother who comes to regret her choice to abort must struggle with grief more anguished and sorrow more profound when she learns, only after the event, what she once did not know: that she allowed a doctor to pierce the skull and vacuum the fast-developing brain of her unborn child, a child assuming the human form (p. 1634).

Evidenced in this quote, Justice Kennedy, though using the imagery of late term abortion, allows the woman to remain his subject, and calls on the potential emotional and psychological consequences of her decision. As Siegel (2008) notes, this was a novel conceptualization of the rights of the state and the construction of women, at least in legal justifications of abortion restrictions—the woman-protective frame Justice Kennedy employed here had not even been used in the Congressional debates during the Partial Birth Abortion Ban (2003), the law at the center of this case. In a way, Justice Kennedy was stepping outside the prototypical debate, as antiabortion movement actors had been trying to do for years. By employing this frame, Justice Kennedy vindicated the shift

from fetal-protective to woman protective frames that antiabortion activists were previous attempting to accomplish, with much division.

It was the reasoning in *Gonzales* and the tenuous but impactful statement by Justice Kennedy that the woman might “come to regret” her decision that would empower an even more tenuous informed consent provision in 2012. In the case of *Planned Parenthood Minnesota, North Dakota, South Dakota v. Mike Rounds* (686 F.3d 889 (8th Cir. 2012)), the 8th Circuit Federal Court actually recognized that a scientific causal proof between trauma and abortion in order for the state to use it as a justification for regulations. At issue in this case was the South Dakota 2005 informed consent law which would mandate that doctors inform women that a risk of abortion is “[d]epression and related psychological distress... and... [i]ncreased risk of suicide ideation and suicide” (S.D.C.L. § 34–23A–10.1). Studies on the psychological impact of abortion on women have been used in very interesting ways in the courts. Though these studies often show little to no connection between psychological trauma and receiving an abortion, the pro-woman frame is used, regardless, to justify regulations. The court, however, found that “a truthful disclosure cannot be unconstitutionally misleading or irrelevant because some degree of medical and scientific uncertainty persists” (p. 906). The *Rounds* decision further noted that there simply does not need to be proof available of a causal link between an increased risk in suicide after abortion. Medical risk, as permitted by *Casey*, and psychological risk, even hypothetical as is in *Gonzales*, can simply mean a correlation and can involve other factors that may play a role; it does not have to show a causal link.

The last significant Supreme Court case on abortion—*Whole Woman’s Health v. Hellerstedt*, 579 US _ (2016)—was heard and decided during the time this project was underway. The pro-woman frame once again was applied to a host of clinic and provider regulations coming out of a Texas law, as described and reflected on in Chapter 1. Interestingly, though the representatives for *Hellerstedt* attempted to extend the pro-woman frame, as the legislation’s authors and supporters had, the Supreme Court was skeptical of these arguments. On a requirement in the legislation that required physicians to have admitting privileges at a nearby hospital, Justice Breyer writes in the opinion,

We have found nothing in Texas’ record evidence that shows that, compared to prior law... the new law advanced Texas’ legitimate interest in protecting women’s health.

We add that, when directly asked at oral argument whether Texas knew of a single instance in which the new requirement would have helped even one woman obtain better treatment, Texas admitted that there was no evidence in the record of such a case (no page number).

Similarly, in response to another provision that would mandate clinics conform to standards of an ambulatory surgical center, the Court found that this in many cases resulted in closed facilities. Justice Breyer again questioned the application of the pro-woman frame on this regulation:

More fundamentally, in the face of no threat to women’s health, Texas seeks to force women to travel long distances to get abortions in crammed-to-capacity superfacilities. Patients seeking these services are less likely to get the kind of individualized attention, serious conversation, and emotional support that doctors at less taxed facilities may have offered. Healthcare facilities and medical professionals are not fungible commodities.

The *Whole Woman’s Health* case shows the evolution of this frame; the courts can define the parameters of the frame as advocates and lawmakers adjust their arguments.

The groundbreaking abortion cases after *Roe* were decided against a social, political, and legal backdrop—one that is fully entrenched within a long history of gender-based laws. Therefore, it is important to understand the overall context of gender and the law when analyzing the evolution of the pro-woman frame in abortion law

Theoretical, Legal and Political Grounding of the Pro-woman Frame

In an amicus brief to the US Supreme Court in the case of *Whole Woman's Health* (2016), professors in law, history, politics, and gender studies asked the Court to consider the origins of woman-centered, protectionist laws. The brief states:

For much of American history, such laws stood supported by cultural beliefs about women's nature and abilities and their corresponding need for protection. The laws in turn preserved and institutionalized the same stereotypes. Until well into the 20th century, it remained the conventional wisdom of legislatures and courts that women are too weak to act autonomously; that they need protection from the perils of public life; that women's need for protection justifies limitations on their liberty (p. 9).

The pro-woman frame exists within a rich history of exclusionary laws pertaining to women. In public spaces such as the workplace, the courtroom, and the US military, women have been subject to discrimination and exclusion presumably for their own protection. Exclusion, in these cases, did not solely rest on the basis of women's biological differences from men, but on their constructed and expected roles in society. It is important to recognize the deep roots of the frames used in regulatory abortion policy, and understand them as a part of a long historical line of policies that used archaic gender

roles and expectations to justify women's exclusion from full citizenship, laws which were ultimately found to be unconstitutional.¹⁵

Protectionism

Protectionism is often referred to in terms of labor laws in the early 20th century that discriminated against particular groups of women by excluding them from working certain hours or jobs (Kenney, 1992). However, this logistical frame can be found beyond labor laws. Defined more broadly, protective framing refers to any policy that has a general aim of protecting the health, standing, or morality of certain populations. It should be noted that this frame has undercurrents of morality: both by those in power who use the frame, and those who are the subject of the frame. In the case of protectionism in policies directed towards women, difference between men and women is often at the forefront. Difference, of course can manifest by sex and by gender. By sex, biological differences between men and women are portrayed as the genesis of protection; i.e., women are biologically different in that they can get pregnant, and are physically weaker. By gender, social constructions of womanhood portray women as more morally grounded, and thus subject to potential corruption by men and public spaces.

As feminist scholars have noted, women have historically been excluded from the public sphere of male-dominated institutions (Fraser, 1990; MacKinnon, 2005). Women's primary space has been in the private sphere, wherein morality and child rearing are the main foci. To illustrate how protectionism was applied to exclude women from male

¹⁵ The question of constitutionality used here is not simply a dramatic flare, rather it is based in the reality that the example issues used here were found to be unconstitutional: women's exclusion from certain jobs, exclusion or limited service on juries, exclusion from military combat roles, and inability to access abortion due to over-regulated clinics were all found to be unconstitutional. In the conclusion of this project I discuss the impact and future outlook of the pro-woman frame as it has been addressed by the courts.

spaces, it is important to look into some of the rhetorical framing in labor laws, military participation, and jury duty. It is necessary to note that not only are these public institutions—the workplace, the military, and the legal system—they are also very much male spaces.

Labor

Protectionist issue framing occurred most often around women in the workplace, resulting in widespread discrimination against women. Labor laws directed towards women in the early 1900s varied from state to state, but they each were based on “assumptions of women’s vulnerability to the hazards of the public world, [and] women’s inability to defend their own interests,” (Daniels, 1993, p. 60). Protectionist laws were a way of instituting notions of normative motherhood—selflessness, residence in the private sphere, and focused solely on producing future citizens. These labor laws limited the hours and days women could work, certain types of employment, or particular tasks at a job site (Lehrer, 1987, p. 3). Many of the conditions women worked in during this time were quite dangerous and arduous, and early feminists sought to bring these issues to the forefront. However, the US Supreme Court case *Muller v. Oregon* (1908) upheld exclusionary laws and entrenched women’s standpoint in the heteropatriarchal family structure and the separation of public and private spheres. Emboldened by *Muller*, “[p]rotective legislation... reinforced the idea that women’s proper place was primarily in the home by setting up a kind of protected status for women in the workplace,” (Crenshaw, 1995, p. 64). The opinion in *Muller* stated that it was a woman’s function as mother that principally justified their protection under police powers of the state:

That woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence is obvious. This is especially

true when the burdens of motherhood are upon her. Even when they are not, by abundant testimony of the medical fraternity, continuance for a long time on her feet at work, repeating this from day to day, tends to injurious effects upon the body, and, as healthy mothers are essential to vigorous offspring, the physical wellbeing of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race (p. 421).

Discriminatory labor laws were not justified on the grounds of worker's rights, because women were working in hazardous conditions and for long hours; these laws were justified based on women's roles in the home as mothers and wives. Interestingly, they used physical difference to make a point about what they saw as women's natural role in society. The Court notes,

Many words cannot make this plainer. The two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capacity for long-continued labor, particularly when done standing, the influence of vigorous health upon the future wellbeing of the race, the self-reliance which enables one to assert full rights, and in the capacity to maintain the struggle for subsistence (p. 422).

Women's perceived weakness in relation to men, therefore, solidified their societal roles, and thus justified protective laws—again, not so much based on a claim of worker's rights, but because of their importance in maintaining and producing future citizens¹⁶. How could a woman, weaker than a man already, bear the burden of a long, strenuous day *and* fulfill the duties of the private sphere? “The limitations which this statute places upon her contractual powers, upon her right to agree with her employer as to the time she shall labor,” the Court opined “are not imposed solely for her benefit, but also largely for the benefit of all” (p. 422). Such legislation was necessary to “protect her from the greed, as well as the passion, of man” (p. 421).

¹⁶ The court here was not talking about protections for pregnant women (though that would come about in the case of *Johnson Controls*); here, they were talking about women's duty and roles as caretakers in the home and to the children they already had, their husbands, and their whole families.

Interestingly, it was the same “passions,” “greed,” and general unsavory nature of men that would also bar women from participation in other aspects of the public sphere. Even as women fought and received the right of suffrage, their discrimination from the public sphere of civic citizenship was a palpable reality.

Juries

Getting a jury duty notice in the mail is to many, a common inconvenience. It would mean sitting through a selection process with little to nothing to pass the time, and if selected, it could mean a missed day at work at best, or at worst potentially weeks worth of sequestration depending on the case. However tiresome any one person might find it, “...jury service is one of the basic rituals by which Americans affirm their participation in society.” (Kerber, 1998, p. 128). But it is this ritual in which women were barred from participating. States granting women the right to suffrage before the Nineteenth Amendment also tended to grant women the right to serve on juries; however, the unconstitutionality of discrimination of women as jurors was not made de jure until the 1994 US Supreme Court case *J.E.B. v. Alabama ex rel. T. B.*, 511 U.S. 127 (1994), which held that holding gender as a proxy for competence of a juror was a violation of the Equal Protection Clause of the Fourteenth Amendment.

During the time when states were wrestling with the idea of women serving on juries, a variety of voices emerged both for and against these restrictions. Most notably to this project were the arguments that women were privileged by *not* serving on a jury, and that being part of a jury would expose women to unsavory details of cases. Historian Linda Kerber (1998) details the commonly heard arguments against women’s service on juries. On the one hand, Kerber notes that women defendants who insisted on women

jurors as a defendant's right, were "...met [with] the claim that women had the "right" to be excused from jury service. Women were understood to be *favored* by the culture, and exemption from jury service was understood to be one manifestation of that privilege" (Kerber, p. 134). This idea that women were more cultured and privileged than men, and thus should be able to opt out of jury service also led some states, such as New York, to allow women to file a "simple affidavit" to excuse themselves from service based on gender alone, or voluntary enrollment (p. 142). Opponents of women on juries would often argue that women would be embarrassed by the details of a case, or that they would not be serious enough—or too serious—calling on women's frivolousness (p. 136). Women were seen to be too fragile to serve on juries because of their high morals and purity—a belief that calls back the image of the pedestal that women were placed on, and the idea of romantic paternalism.

Opponents of women on juries also made arguments that were deeply rooted in the gender roles of the mid-twentieth century, which firmly connected women with their household duties. These arguments purported that this exclusionary or discriminatory law was to protect women from being pulled away from their familial duties. "Men who were untroubled by fears that jury service would lead men to neglect their familial or professional duties were adamant in their insistence that women could not be relied on to maintain households properly if they were burdened by jury service." (Kerber, p. 146). One of the cases that made its way to the US Supreme Court stemmed from a voluntary registration statute in Florida. Challenging an all-male jury conviction of a woman who had murdered her abusive husband, appellants in *Hoyt v. Florida*, 368 US 57 (1961) argue that the voluntary registration statute for women jurors was unconstitutional.

Appellants in this case, however did not prevail in persuading the Court that the statute was discriminatory. Justice Harlan wrote in the opinion,

It is true, of course, that Florida could have limited the exemption, as some other States have done, only to women who have family responsibilities. But we cannot regard it as irrational for a state legislature to consider preferable a broad exemption, whether born of the State's historic public policy or of a determination that it would not be administratively feasible to decide in each individual instance whether the family responsibilities of a prospective female juror were serious enough to warrant an exemption (p. 64).

Justice Harlan was by and large reinforcing the opinion of the Florida Supreme Court from which this case was appealed, *Hoyt v. State*, 119 So.2d 691 (1959). In the opinion leading to this Supreme Court case, Florida Supreme Court Justice Drew when he wrote:

Whatever changes may have taken place in the political or economic status of women in our society, nothing has yet altered the fact of their primary responsibility, as a class, for the daily welfare of the family unit upon which our civilization depends. The statute, in effect, simply recognizes that the traditional exclusion was based not upon inherent disability or incapacity but upon the premise that such demands might place an unwarranted strain upon the social and domestic structure, or result in unwilling participation by those whose conflicting duties, while not amounting to actual hardship, might yet be expected, as a general rule, to affect the quality of their service as jurors (p. 694).

Again, no such concerns over familial obligations were raised for men, even if we consider that men and the families they support would potentially be financially burdened by a lengthy jury service. But women were so seen as too integral to the healthy functioning of families to be pulled away, too cultured to bother with politics and law, and too emotionally fragile to handle what could be gruesome facts of a case, discrimination and exclusion of women from juries was normalized throughout much of the twentieth century until it was settled in law in 1994.

The Military

Perhaps surprisingly, settling the matter of sex discrimination on juries did not come until 1994. Likewise in its recent change, women were not integrated into military combat positions in the law until 2015. Similar to labor and jury service, the military is a part of civic life, a “civic obligation” (Kerber, 1993, p. 95), part of the public sphere, and perhaps one of the most male-dominated areas of the public sphere. Though women have participated in US wars and in military service in a variety of ways, their experiences and inclusion is gendered; they have been historically excluded from combat roles and from the draft. Thus, “military service remains a major aspect of the citizen's relation to the state which is governed by gendered relationships and rules,” (p. 98).

As President Carter debated the notion of eliminating gender distinction in the draft, those opposed dug deep on arguments of gender difference. Like labor and juries, the exclusion of women from the draft was considered antithetical to women’s proper gender roles (Kerber, p. 122). Ultimately, a case was brought to the US Supreme Court challenging the Military Selective Service Act (1976). Despite the fact that a District Court had found the act to be unconstitutional, violating the Due Process Clause of the Fifth Amendment, the Supreme Court reversed the decision. Justice Rehnquist opined that because there was a combat exclusion for women, that women would not be needed for draft purposes. The Court went to significant lengths to attempt to show that this justification was not tantamount to gender discrimination, but a function of the military and its unique standing as an institution: “[t]he fact that Congress and the Executive have decided that women should not serve in combat fully justifies Congress in not authorizing their registration, since the purpose of registration is to develop a pool of potential

combat troops” (*Rostker v. Goldberg*, 453 US 57 at 79 (1981)). They also relied on gender difference to support the argument, “The Constitution requires that Congress treat similarly situated persons similarly, not that it engage in gestures of superficial equality.” (p. 79). It was a convenient out.

As *Rostker* specifically leaned on gender difference and the exclusion of women in combat roles, this issue begs investigation as well. The Pentagon, under the direction of President Obama in December 2015 instituted the inclusion of women in combat roles. Women had long been in combat situations informally, and stationed in combat zones, but this would be the first codification of the lifted ban. Previously, being excluded from combat roles had significant economic impact for women,

The military provides significant economic opportunities to its members...It offers its members a way out of poverty and provides many lower class Americans with otherwise unavailable economic opportunities. Military opportunities can be especially important to women, who as a class have historically been employed in the lower paying occupational strata. To the extent that discrimination denies women equal access to these opportunities, society as a whole feels the effects (Rogers, 1990, p. 166).

However, in addition to discrimination with regard to access to resources and career advancement, the justifications for excluding women from combat roles relied on a sense of romantic paternalism and gender difference. Arguments that women’s physicality and psychological makeup were not adequate for military service were among the more blatant ones. If women were not physically or emotionally capable of combat, this would potentially “...seriously imperil the national defense effort” (Cramsie, 1983, p. 556). Additionally, opponents to women in combat roles also argued that sociologically, male soldiers were more capable of handling wartime’s reality (p. 556), and that the presence of women might activate their need to “protective impulses” towards women (Rogers, p.

174). Though many of these arguments were debunked thoroughly by scientific experimentation, the discourse was reflective of the underlying norms of romantic paternalism. Congressional hearings in 1980, as the draft exclusion was being considered, were rife with such arguments, ultimately leading to the inevitable stalled progress of women in formal combat roles.

The understanding that women were too “delicate” by nature to handle war harkens back to the same argument that would exclude women from juries. Ultimately the harshness of the public sphere was seen as too much for women’s gentle sensibilities. In labor, too, women’s physical state was best saved not for demanding occupations, but for childrearing and keeping home. However, the “right to be a lady” excluded from these and other public activities and duties were not applied across racial lines. White women alone were able to be classified as “ladies” and thus worthy of romantic paternalism.

White woman elitism

Protectionism, however common throughout history and into the present, has an unmistakable race-based application. Black women were excluded from the realm of protectionism. This was based in socially constructed understandings of womanhood and who is deemed a “lady.” Black women were not seen as feminine, frail, or in need of protection—not that they were seen as strong, but that they were seen as more masculine. The conditions of slavery thrust upon the Black community set the stage for Black women’s anti-feminine construction. Black women were sold and traded as commodities; valued only for their labor and the future laborers they could produce. In this way, they were pushed outside the idealization of femininity. In postbellum US society, Black women’s reproduction was not seen as a patriotic act as it was for white women.

Lawmakers did not celebrate Black women's families and children as being good for the country. In fact, Black families and children specifically were—and in many ways still are—seen as burdensome. Black women were seen as hyperfertile, needing constant control and intervention (Hancock, 2004).¹⁷

Beyond the social constructions of Black women, the occupations and activities that were held by Black women were not included under protectionist policies—those were largely the domains of white women. Black women, during the *Muller* era, had long worked in dangerous occupations for long hours, only to tend to the home as well. However, those occupations covered by protectionist laws were mainly held by white women, with Black women's occupations such as agricultural work, outside the scope of protection.

In addition to the occupations in which white women were barred based on their social positionality and perceived fragility, the foundation of civic participation and political citizenship was denied to women. Voting rights were only granted to white women in 1920; women of color were not able to access that right until 1965. In all of these discriminatory and exclusionary laws was the deeply engrained idea that women need protection from the evils of society, men, and public life. Romantic paternalism would serve to elevate white women symbolically, but discriminate in practice. As US Supreme Court Justice Brennan said in the opinion of *Frontiero v. Richardson*, 411 US 677 (1973) “[t]raditionally, such discrimination was rationalized by an attitude of "romantic paternalism" which, in practical effect, put women not on a pedestal, but in a cage.”

¹⁷ In Chapter 4, I discuss the history of the violence and control of Black women's bodies when it comes to reproduction.

Ultimately, as all of the cases that formerly excluded women from participation in the public sphere have been found unconstitutional, the frame's scope is limited. As such, conservative lawmakers and activists alike have turned towards a more uplifting and modern frame: empowerment. By aligning their language—not their beliefs—with feminist and women-empowering rhetoric, conservative political actors can claim some ground on women's rights, at least again, symbolically. Unlike protectionism, which portrays women as fragile, empowerment rhetoric is more positive, and persuasive to contemporary women who see themselves as strong, capable, and equal.

New Elements: Empowerment and the Cooption of Feminist Rhetoric

Denbow (2015) notes that many “state reproductive restrictions actually take up feminist concerns about coercion and pressures and turn these concerns against feminist aims” (p. 107). Indeed, the pro-woman frame, as theorized and explored in this project contains not only elements of protectionism, but also empowerment, or cooption of feminist rhetoric. Conservative women's organizations, and conservative policymakers attempt to connect with and represent other women through the use of empowering language.

Conservative Women in the Political Arena

Conservative women's interest groups and organizations have effectively employed issue frames in promoting various conservative policies and as a way to make claims about representation of women. Schrieber (2008) notes, “...frame transformation produces language that makes sense of feminist discourse in ways that conservatives recognize and favor” (p. 9). The power behind conservative women's organizations co-

option of feminist—or at least empowerment and protectionist language—is in their appeal to non-essentialism; women do not represent a monolithic block who all believe in the same things or adhere to the same values, or care about the same issues. In this way, conservative women’s organizations “disrupt the common fusing of feminist and/or liberal with women’s interests,” (p. 12).

Conservative women are able to coopt feminist language to advance anti-feminist aims. In the case of women in the military, discussed above, conservative women from the Eagle Forum argued that “the maintenance of gender difference was a matter of civil rights: “Our young women have the right to be feminine, to get married, to build families and to have homes. Our daughters should not be deprived of rights which every American woman has enjoyed since our country was born...”” (Kerber, 1993, p. 122, citing Hearings on Military Posture and HR 6569). Smith (2014) shows how the conservative woman’s group, the Concerned Women for America (CWA) both appropriate and distance themselves from liberal and radical feminism. They both marginalize feminists, and claim a more genuine path to empowerment: “... CWA can argue that its real opponent is not feminism as a philosophy, but the *feminists* who have twisted it into something foreign and unfamiliar to “real” women,” (emphasis in original, 121). They also contend that liberal or radical feminists peddle fear: the victimization of women, and exaggerate discrimination claims (Deckman, 2016; Schrieber, 2008). This, they say, is not motivated by wanting to truly empower women, but to “promote a feminist agenda and get more research money from the federal government” (Smith, p. 109).

Similarly, some conservative women's organizations have even claimed that they are "true" feminists by espousing a protectionist stance, and liken it to the standpoint early 20th century feminists took on abortion (Smith, 2014). Antiabortion advocates using the pro-woman frame are seeking to discredit the pro-choice movement, re-define women's issues and standpoints, and appear more "authentically" concerned for women (Trumpy, 2014).

Conservative Women Lawmakers

A burgeoning scholarship has turned its focus on conservative women lawmakers in a similar way that scholars have analyzed the activities and frame usage of conservative women organizations. Though, to focus on lawmakers has distinctive political outcomes—after all, lawmakers are responsible for introducing, debating, and passing legislation. The way conservative women lawmakers frame issues matters to a different degree. They are the ones who most directly represent their constituents in the formal institutions of government. As such, a compelling, and growing scholarship shows that conservative women lawmakers are approaching atypical issues and are framing them as women's issues (Deckman, 2016).

One could look at the rise of conservative women such as vice presidential nominee Sarah Palin, who claimed a kind of "conservative feminism" as one that "primarily promotes women's self-reliance and encourages "Mama Grizzlies" to become more engaged in politics." (Deckman, 247). Other lawmakers such as Senator Joni Ernst, Representative Cathy McMorris Rodgers, and Representative Mia Love are carving out a name for themselves as strong conservative women within the Republican Party, and inserting some of those pseudo-feminist frames into political discourse (p. 252). Because

their rise is still relatively new, it remains to be seen how these conservative women lawmakers are effecting political discourse, representation, and issue framing; however, studies like this are a step in the direction of answering some of those important questions.

Implications and Conclusions

Gender-based discriminatory policies have a rich history in this country; and in some cases, a not-too-distant history. Considering the language used in some of the debates surrounding women's inclusion into the public sphere evidences deeply held beliefs and assumptions about gender roles and norms. The intense focus on gender differences had largely been used to discriminate and exclude women from full citizenship. As Kerber (1993) writes, “[c]itizenship involves claims of rights—notably suffrage, and also the right to pursue happiness in various ways, among them freedom of expression and of travel—but it also involves a wide range of civic obligations,” (p. 95). As women were excluded from civic obligations and rights, it is clear that citizenship itself was gendered.

Looking forward to current frames in gender-based policy issue areas, such as abortion, these same “difference” arguments are being made. The pro-woman frame of abortion regulations is a contemporary manifestation of a long line of discriminatory policies. It rests on antiquated claims about gendered behavior, gender roles, and gender norms. Using protectionist arguments, the abortion regulations could be understood as being in women's best interests, as opposed to limiting women's rights. Furthermore, empowerment language allows lawmakers and advocates to displace pro-choice voices.

Though the antiabortion movement speaks with many voices, the issue of abortion has undergone an important frame transformation from one of its most dominant frames—fetal personhood—to the pro-woman frame. As I show throughout this study, the pro-woman frame is now fully entrenched in abortion discourse. It is important, therefore, to more fully understand its current impact on politics and the law.

Chapter 3: Operationalization and Deployment of the Pro-Woman Frame

As documented by scholars throughout the U.S., Canada, and Europe, the pro-woman framing of abortion regulations is widespread in the discourse of abortion politics. This frame utilizes common narratives such as the victimized abortion seeker, the malicious doctor, and the helpful state. Because of these themes, state lawmakers can justify regulatory measures as being protective of women's health and best interests, presumably giving women important information, and empowering women's decisions by fortifying their rights. In this light, the pro-woman frame seems almost like a typical fairy tale: a struggling woman, held captive by an immoral force of evil, in need of rescuing by a most wise and noble knight. Perhaps a woman is even under some kind of evil spell and the knight has to save her from her own self. When applied to unplanned pregnancy, women seeking abortion are helpless and in a perilous situation, vulnerable to abortion doctors who are looking to coerce women so they can financially prosper from abortion. States then, via lawmakers, are the knights on horseback who are there to rescue vulnerable women from the risk of an uninformed choice.

Various scholars have focused on the subthemes contained in antiabortion discourse. Some have found empowering, feminist language and frames employed (Denbow, 2015). Others have found protectionism at work in regulatory abortion policy (Trumpy, 2014; Rose, 2011; Siegel, 2008). In this study, I take a holistic view of the pro-woman frame and show that the frame can be organized into several substantive subsets: empowerment, ignorance, and protectionism. Each subset evidences a distinctly pro-woman or woman-centered framing, but the approach and language are different, and might be interpreted differently by the public. Though the scholarship produced in this

area has been important, no one has presented a comprehensive analysis of the ‘pro-woman’ frame and its ‘subset’ themes. In this project, I contribute significantly and build on previous research by fully operationalizing the subset themes of the pro-woman frame, and show how the subsets are used distinctly by lawmakers in antiabortion policy.

Though important scholarship has established women’s protectionism (Siegal, 2008; Rose, 2011), and empowerment (Denbow, 2015) frames, none have provided the level of detail or analyzed them as together part of the larger pro-woman frame. In addition, few scholars have discussed the pro-woman frame’s use by lawmakers, or more specifically women lawmakers, as a way to justify the role of the state in reproductive politics. This project, therefore, recognizes how each of these framing subsets works in conjunction with the other and how they are threaded together in law and political discourse to create the larger pro-woman frame.

In this chapter, I will discuss these subsets in more detail. I will also present a 50 state study of all of the regulatory abortion bills introduced at the state level from 2009-2013 to show how the bills are framed—specifically how the pro-woman frame is utilized. I also analyze the fetal centric frame as a point of comparison as it has dominated the antiabortion discourse so heavily.¹⁸ From this analysis, I show the significance of use of the pro-woman frame against the fetal centric frame; though the point at which the shift occurs is unclear, this research confirms a significant frame shift in antiabortion policies. In the process of examining the bills, I also include a deep reading of regulation type and present frequencies and descriptive statistics of the bills.

¹⁸ Though the religious frame is part of antiabortion framing, especially among movement actors as discussed in Chapter 2, my goal here is to compare the most dominant frames in antiabortion policy. Additionally, I seek to understand the departure from the maternal-fetal conflict, which situates fetal rights in opposition to women’s rights.

To my knowledge, this is the first analysis of this kind to employ a 50-state study of the pro-woman frame, and where the individual subset themes are used to more deeply analyze how women and men lawmakers attempt to advocate for women through antiabortion policies.

Pro-Woman Frame Subsets

As discussed previously, the pro-woman frame is multifaceted, constituted by three subsets: empowerment, ignorance, and protectionism. While these frames are interrelated and represent important aspects of the pro-woman frame, they all, ultimately, represent a renewed focus on ‘women’s interests.’ Whereas prior framing of abortion regulations have been largely centered on the fetus, the pro-woman frame either adds the woman back into the equation or focuses directly on her rather than the fetus. A deeper look into these frame elements exemplifies how this ‘concern’ about women translates into law and policy.

Empowerment

The empowerment subset can be understood as empowering women to help them make an informed and voluntary choice about reproductive decisions. In this subset, language and rhetoric positions women as having agency in their decisions; their choice is important if it is informed and uncoerced. The state, in this subset, is positioned as the actor who empowers women. Through specific provisions delineated in legislation, the state can make sure that doctors give women information about options and opportunities so that women can make fully informed decisions.

Jennifer Denbow (2015) documents the use of ‘empowerment’ language in regulatory abortion legislation more recently, stemming from the *Gonzales v. Carhart* decision in 2008. “Rights language” can be found throughout these bills pointing to women’s abilities and freedoms despite the fact that these bills are regulatory. These kinds of laws assume that women are autonomous in their decision-making and reinforce the principle of “self-governance or self-management” (p. 4). Women are hence situated as empowered decision-makers with regard to reproductive choices. The language about having the “right” or “opportunity” to have a pre-abortion procedure such as ultrasounds or counseling is a frequently employed tactic. Similarly, calls for “allowing” a woman to see particular information or ultrasound images, being “provided” that information, and appeals to women being given “objective, non-judgmental, and scientific” information suggests that perhaps women would not otherwise get this information because it is perhaps being withheld, or negligently left out by abortion providers. The state is situated here as specifically upholding women’s rights during the abortion process. Again, a significant trope in this narrative is that doctors and clinics are seeking to persuade women to get an abortion, and will do so by lying or withholding information. Additionally, bills that use empowerment language will often suggest that women are “free” to withhold their consent and may back out of abortion. They are also construed as free to look away from an ultrasound, or not listen to a fetal heartbeat. Lastly, the “freedom” language is often applied to insurance regulations, where in the case that abortion coverage is not a covered health option, a woman is “free” to purchase separate insurance to cover abortion only, as a supplement. This is a curious suggestion, as economic situations often limit a person’s ability to act freely, especially when it comes

to health insurance to cover one procedure that a person may never know they would need. As an illustration, this very language of supplemental insurance stirred up controversy in states such as Michigan, which did not include exclusions for rape or incest in their 2012 bill, ultimately succumbing to the governor's veto. However, in 2013, a similar bill was passed without exceptions for rape or incest, prompting pro-choice advocates to deem supplemental insurance as "rape insurance."

Also within the empowerment subset is anti-coercion language, which has the purpose of situating full and voluntary consent as being essential to reproductive decision-making. Anti-coercion language mimics domestic violence advocacy. In many ways, coercion on reproductive decisions is a function of control over women in abusive relationships, so that mirroring of language is purposeful. However, it is interesting that there is no such language about the state's "undue influence" over the decision-making process. In fact, to the contrary, a state's right to influence a woman to choose to follow through with birth is enshrined into law.

Empowerment or rights language used in what is otherwise regulatory policy is something that is commonly employed by conservative women's groups, and conservative women politicians looking to redefine feminism or at least what it means to be a champion for women.¹⁹ It is important to acknowledge, however, that there is an element of truth in this language: women should have rights in all aspects of reproductive decision-making. These rights should include being informed, being able to acquire information about their pregnancy, and being given viable options. All of these rights are

¹⁹ For more on this topic, see *Righting Feminism: Conservative Women and American Politics* by Ronnee Schreiber (2008) and *Righteous Rhetoric: Sex, Speech, and the Politics of Concerned Women for America* by Leslie Dorrough Smith (2014). In these books, the authors thoroughly discuss the rhetorical tactics of conservative women's groups, and how they employ empowerment rhetoric to show how they are 'authentically' feminist.

a vital part of women's dignity in reproductive decision-making. The question is, who holds the power in 'empowerment,' women or the state? As described above, the state is situated as granting women agency – making sure they get very specific information, and upholding, or even instituting the right to see and hear the fetus. If we believe this, the state has the power and holds all of the control. On the other hand, women might be assumed to have natural rights in this respect and the state is simply upholding and codifying them. If this were the case, women should have much more agency and flexibility in accessing their reproductive rights.

Protectionism

As noted in Chapter 2, protectionism as applied to gendered policies has a deep historical rooting in discriminatory laws in labor and the workplace, and semi-political spaces such as courts and the military. The justification for treating women differently in these occupations and activities was squarely based on their socially constructed gender roles as mothers, caretakers, housekeepers, and producers of citizens. Women, in this paradigm—more specifically non-working class white women—have a particular place in society, which includes activities and duties within the private spheres. Anything outside of the sphere would necessitate women's protection. As such, the state is uniquely situated to do the protecting, and to identify those persons and activities in which women need protecting from. In this subset, protectionism is used in a very similar way and can be defined as protecting women's health and best interests when seeking abortion. Of course, if women are being protected, there needs to be something or someone that they are being protected from. In this subset, women need to be protected from doctors or, ironically, from themselves.

Contained within this frame is the positioning of doctors as negligent, harmful, or greedy. They are often represented as ‘drop-in’ doctors having little to no relationship with their patient. While it may be true that women don’t have long-term relationships with abortion providers, this is not necessarily a determinant to their quality of care. In fact, this is more of a product of the bifurcation of reproductive health services from all other health services (Rose, 2007). Additionally, as women can also obtain abortions from doctors who do have private practices, this notion of “quack” doctors or even dangerous abortion providers is more relevant to those women who cannot afford private doctors. To be sure, doctors have in the past taken advantage of women’s precarious financial situations when they are faced with unplanned pregnancies. The infamous case of Kermit Gosnell, the story, which is described in further detail below, shows that indigent women when desperate can fall prey to doctors who do not have their best health interests in mind.

In the protectionism subset, abortion itself is shown to be an inevitably harmful medical procedure; if women are not harmed physically, then, they could suffer emotional or psychological harm. The risks associated with bodily harm are often the focus of attention in the protectionist frame; however, psychological damage is also addressed. The psychological damage element is interesting and seems to be a point of tension within the bills, and perhaps for antiabortion proponents generally. While the psychological harm associated with abortion as purported by antiabortion advocates and lawmakers is asserted throughout legislation, psychological harm is often omitted from exceptions to regulations. For example, a late term abortion ban might note the language in the *Gonzales* case that women could suffer greater pain and psychological damage due

to abortion; in that same bill, lawmakers would insert exception language, which would allow exceptions to the law if the woman were in imminent danger of death or substantial impairment of bodily harm. Language like this is often found in regulatory abortion bills, and is important to the overall framing of the bills. Exceptions provide a softening effect of the bill—it shifts the bill from punitive to protective. By adding language that would provide exceptions, lawmakers can create highly regulatory bills, which might potentially eliminate almost all access to abortion, while maintaining that they are acting in the interests of those women who are the most vulnerable.

Similarly, another group of women who are the subject of protectionist language are victims of rape or incest. Statements that exclude victims of rape and incest from the provisions in regulatory abortion policy utilize a specifically protectionist frame. For instance, during debates around the Patient Protection Plan and Affordable Care Act in 2010, and the No Taxpayer Funding for Abortion Act in 2011, a media frenzy occurred following several lawmakers' insensitive and relatively inflammatory statements regarding rape victims.²⁰ During this time, other Republican and conservative politicians struggled with controversial statements regarding rape as well. One Republican Idaho State Senator infamously suggested that rape within marriage was not truly rape.²¹ Others suggested that pregnancy could not occur as a result of rape. Representative and Missouri Senate candidate Todd Akin stated that following “legitimate” rape, “the female body has

20 In the No Taxpayer Funding for Abortion Act (2011), the term ‘rape’ in the bill text contained a qualifier ‘forcible,’ which lead many to believe that the Republican sponsors of the bill—namely, NJ Representative Chris Smith and Republican Party leadership such as then-Speaker John Boehner—were attempting to redefine rape. See <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/31/AR2011013105755.html>.

21 http://www.huffingtonpost.com/2012/03/20/chuck-winder-rape-abortions_n_1366994.html.

ways to try to shut that whole thing [pregnancy] down.”²² Such statements galvanized pro-choice organizations and allies who pointed out the insensitive nature of antiabortion lawmakers, even towards victims. While Akin later recanted his statement, the callous sentiment of his statement was not lost on the public. Perhaps the intervening political events of the “War on Women” were an impetus for some of these bills to include exceptions for rape and incest. However, exceptions for rape and incest have been a common exception since legal abortion has been regulated. Interestingly, and perhaps tellingly, rape and incest exceptions are far less likely to appear in bills than exceptions for the life or health of the woman. For example, the provisions for exceptions for the life or health of the woman appear in 291 bills, whereas rape and incest exceptions only appear in 50 bills.

Ignorance

A curious third subset of the pro-woman frame is the subset of ‘ignorance.’ This frame focuses on the woman’s lack of knowledge about either the abortion procedure or fetal development. As such, these regulations are seen to be necessary to foster women’s understanding of abortion and pregnancy. This subset situates women as having no real knowledge about the abortion procedure, its ramifications, or consequences. In some ways it overlaps with the empowerment subset; however, the language used in this subset takes on a distinctively paternalist tone. It is defined by its assumption that the woman does not know about abortion or the consequences, whereas the empowerment frame makes no such assumptions.

²² <http://www.nytimes.com/2012/08/21/us/politics/rep-todd-akin-legitimate-rape-statement-and-reaction.html>.

In this frame, the state has a duty to educate women who seek abortions. However, unlike the ‘educational’ elements of the empowerment subset, her decision-making on this issue is suggested to be *inherently* uninformed, and one way—perhaps the only way—is to correct this is for the state to supply her with the necessary information. The language used in this frame consists of explanatory phrases, and assumptions of ignorance of the pregnant woman. A phrase which often appears throughout the bills is one of women’s “uninformed choice” to have an abortion. This language suggests that though the state affirms that women have a choice to undergo abortion, there is certain information that must be delivered to her in order for that choice to truly be informed and voluntary. In fact, one of the more common ways in which voluntary consent to abortion is discussed in these bills is noting, “consent is only informed if” a particular set of pre-determined information is given to the woman. Any detailed information about the risks, consequences, and seriousness of abortion, fetal development, and pregnancy are positioned as educational tools to aid the woman in her decision. This frame also sometimes appears alongside the fetal personhood frame. When this happens, the state purports to give women necessary information to save the “unborn child from a woman’s uninformed decision to have an abortion.”

Because this frame assumes the absence of information, there must be a party that is either not providing that information, or withholding it. As such, a secondary element of this frame is the assumption that women will have no relationship with their abortion providers. The provider cannot be safely assumed to provide the woman with full and accurate information about the procedure, so therefore, the state needs to mandate particular information.

Fetal-Centric Frame

To falsify my hypotheses that the pro-woman frame is robust throughout regulatory abortion policy, it was necessary to juxtapose it against a frame that is the more traditional way to frame antiabortion policy: the fetal-centric frame. Fetal-centrism in abortion regulations has been a commonly employed frame throughout the history of abortion politics. It was this frame that was preferred among antiabortion organizations and provided a moral compass for arguments against expanding abortion policy post-*Roe*, (Rose, 2011; Roth, 2000).

In this frame, the fetus is the main focus, as opposed to the woman; namely, the fetus's potential for life, futurity, childlike characteristics, and right to life. One of the most prevalent themes of fetal centrism in the bills is in simply acknowledging the fetus itself. Any language or phrasing around the dimensions of the fetus, its size, appearance, or presence of internal organs compels the focus towards the fetus.

Another tactic used to re-focus on the fetus includes language and concepts regarding the fetus' propensity to feel pain. Often rhetoric about fetal suffering, or references to medical administration of anesthesia during fetal surgery is used to bolster claims that the fetus can feel pain and must be protected from abortion. Though fetal pain and fetal descriptions are decidedly fetal centric, they are also indirect, or veiled in more recent legislation. Such rhetoric implicates the fetus' childlike attributes and the similarities between fetuses and born persons. This is often called personification of the fetus, or the "futurity" of the fetus, which suggests that though the fetus is not viable for sustaining life outside the womb, it could be at a future date. This is also where

legislators call to end sex discrimination of future girls by banning sex-selection abortions, as I will discuss below in greater detail.

Other fetal centric language includes statements such as Alabama's (2010) bill HB39, "[t]he abortion will terminate the life of a whole, separate, unique, living human being." Statements such as these are determinative of the state's belief in fetal life. No longer is viability needed for these lawmakers to assert their belief in and protection of fetuses. This more direct side of the fetal personhood frame is developed out of the maternal-fetal conflict—the concept that describes the tension between the woman and the fetus, as sentient beings with a life and with rights, none greater than the other.

Hypotheses

My dissertation tests the following hypotheses.

H1: Lawmakers systematically deploy the pro-woman frame in regulatory abortion policy.

H2: Lawmakers are using the pro-woman with greater frequency than the fetal personhood frame.

No study to date has systematically investigated if or how lawmakers have used the pro-woman frame in introducing regulatory abortion policy across all 50 states. Noted earlier, scholarly work has largely focused on the usage of this frame by social movement actors in the antiabortion movement, but such studies have not included lawmakers. Because of this omission, it is imperative to understand if that movement-based frame is seeping into state legislatures' bills. Additionally, I suspect, as research has shown in social movements, that the pro-woman frame is gaining momentum against the more traditional

framing of fetal personhood. However, to go a bit further to understand the usage of the pro-woman frame by state lawmakers, it was also important to look into other factors that might explain the pervasiveness of the frame. As such, I look into cross-state variation in the use of the pro-woman frame: how does the usage change based on variables such as party, region, or year. Was there a specific time or place in which this frame emerged or peaked? For these questions, I test the following hypotheses:

H3: The pro-woman frame will be more frequently used in Democratic states because the rhetoric more closely resembles feminist language and is therefore more palatable in liberal-leaning states.

H4: The pro-woman frame is likely to increase throughout the years as certain language and policies diffuse throughout the states.

In H3, Democratic states would be states that are typical of voting or supporting Democratic policymakers in state government. They can have Democratic majorities in their assemblies, and possibly a Democratic governor.²³ As Democrats are more likely to identify with feminist or progressive policies and rhetoric, it is foreseeable that in the event that they do introduce an abortion regulation, it would take on a pro-woman frame. Additionally, as policy diffusion is a robust occurrence among states, it should be possible to see the language increase over the years. If a null finding were to occur in any of these hypotheses, the results would still be compelling. For example, if a pro-woman frame were found to not be prevalent in regulatory abortion bills, its absence would contradict a symbiotic and proven relationship between antiabortion interest groups and state legislatures. It would indicate that state lawmakers are not latching on to that frame,

²³ These Democratic “blue” states do not always have to have a Democratic governor. For example, at the time this study is being written, New Jersey has a Democratic majority in the state assembly, but a Republican governor.

which gained grounding in the antiabortion movement, according to social movement scholars (Rose, 2011; Trumpy, 2014). If it were not being used in blue states, or in any kind of regional pattern, it would indicate that there is no pattern of its use by party or region. If Republican lawmakers are using a pro-woman frame as frequently as Democrats, perhaps they are doing so in response to the backlash they faced around 2009 – 2010 when media outlets and feminist movement actors pronounced that Republicans were waging a “War on Women.” Other such intervening or driving outside political events could certainly have a significant impact on its use. Last, if there is no pattern by year, which could be the case given the limitations of a five-year time span, it might indicate that this frame has been used earlier than initially expected. If this is the case, the years are still interesting as in the 2010 elections Republicans swept numerous state legislatures and governorships. Perhaps this Republican shift into control can be captured in this analysis. Additionally, if there were trends in its use among party, region, and year, it would tell a predictive story about how it is deployed and when it might be used in the future.

One additional factor tested for in this project was the successfulness of the bills using the pro-woman frame. For this, as explained in the variable section below, I used the status of the bill to see how far a bill that uses the pro-woman frame advanced in the state legislature; for example, whether the bill died in committee, or went all the way to the governor’s desk. I do not posit a hypothesis here because I would like to be careful about assuming any causal connection between the success of a bill and the use of the pro-woman frame. I do not suggest that the pro-woman frame would allow a bill to advance any further than other bills that did not employ this frame. State level politics

can be quite difficult to make inferences about, especially when it comes to determinants of bill's success. As a policy expert told me in the course of my research, lawmakers often have countless reasons to support, not support, pass, or not pass a bill. Often it comes down to timing of an issue, salience, party priorities, and political deals. Unlike Congress, states' legislatures range in level of professionalization – some states have part time legislatures with very little staff – all which effects how often bills are introduced and how successful they are. Nevertheless, I decided to test for the status to see if there would be any potential pattern there. Taking a cue from Fenno's method of soaking and poking, I seek to observe political activity that has not yet been observed (Fenno, 1978). Perhaps a larger story would emerge from this one point at a later time, with further investigation through interviews and participant observation research.

Methods

In order to adequately test my hypotheses, I content analyzed the language of all regulatory abortion measures introduced at the state level from 2009 – 2013. These years were specifically important as they represented a sudden increase in abortion bill introduction and activity in the states. It is critical to study phenomenon as they happen. However, as no publically available database of introduced bills on abortion existed, this one needed to be built from scratch. As such, I collected all bills for this five-year span by visiting state legislative archives online for all 50 states and conducting a word search for “abortion.” Earlier in my data collection process I attempted alternative words as well, including “woman,” “fetus,” and “unborn child,” however, those did not yield results that were germane to the search. After identifying bills that were on the topic of

abortion, I read through to make sure they were regulations. My primary focus for this project was bills that would regulate abortion, the procedure, the practitioners, the access, or public funding. I excluded bills that pertained to minors, as this would delve into another area of law, including minor's rights, child welfare, and family issues. Focusing on adult women was a way to set a neutral standard, as the majority of people seeking abortion fall into this category.

After reading through the bills and collecting 794 regulatory abortion measures, I categorized these bills by state, year, type of regulation, sponsor and cosponsor, party of sponsor and cosponsor, and status of the bill. Using a content analysis software program, NVivo, I coded the language of each bill for overall themes apparent in the pro-woman frame, and fetal personhood frame. For the pro-woman frame, I used the coding schema above – that includes the subsets of empowerment, ignorance, and protectionism. The empowerment subset includes any language that was generally empowering of rights, anti-coercion language, and language that suggested the woman would not be prevented from doing something such as averting her eyes from an ultrasound screen. The ignorance subset includes language that assumes women's inherent ignorance of abortion procedures, as well as assuming no relationship with the abortion provider. The protectionist subset includes language about protections for women's physical or mental health, protects victims of rape or incest, includes concerns about the conditions under which an abortion is performed, situates abortion providers as harmful or negligent, and portrays women as passive victims (See Appendix A for a complete explanation of my codebook). The fetal personhood frame includes language that focused on fetuses, or the futurity of the fetus. The codebook for the various frames and subsets went through

extensive reworking and theoretical backing through feminist literature on rhetoric and language to ensure its soundness of structure.

After hand-coding the 794 bills, I then produced a database where the unit of analysis is the particular phrases in each bill. Because my primary concern was the framing of the bills, and understanding state variation, my dependent variable is the presence or absence of the pro-woman frame. As such, any bill that contained the elements of the pro-woman frame—be it an empowering, protectionist, or ignorance frame—was given a 1, and the absence a 0. I decided against giving weight to bills that contained multiple elements of the pro-woman frame, as one would be enough to evidence its existence. I will discuss each element of the pro-woman frame in depth later in the chapter. I also coded the fetal personhood frame in the same way as dichotomous dependent variables.

The year, region, gender and party of sponsors and cosponsors, and status were all treated as independent variables. Year was an ordinal variable. Each region was represented as a dichotomous variable where 1 was the particular region, and 0 was all other regions. Party was also transformed into dichotomous variables where 1 was Republican and 0 was Democratic or bipartisan.

Party ID

Perhaps more notably, I categorized the bills by the party of the sponsors and created dichotomous variables for Republicans and Democrats. Specifically understanding the partisan dynamics of frame usage was of particular importance. Slothuus and de Vreese (2010) persuasively point out the necessity of acknowledging the frame source when assessing the success or ubiquity of an issue frame. Political parties,

they assert, are a particularly important site for investigation due to their overall presence and elite status in the public. Slothuus and de Vreese write that not only do political parties take part in issue framing, but that framing matters particularly as the issue is salient to the general public, and when that issue generates partisan conflict (p. 634). Additionally, in the larger scope of the impact of a frame, they posit that the public is more likely to attach themselves to a frame used by a party, especially when the partisanship of the citizen matches that of the party deploying that frame.

Region

To understand the regional dynamics, I classified each state by region: Northeast, Midwest, South, and West. This was vital to assess whether states within a particular region were more likely to use a particular frame, or frame element. Significant findings across region would point to instances of trends in policy diffusion. This phenomenon occurs when one state government picks up on legislation of their neighboring states' government. Karch (2007) notes that "[t]he impact of geography may be due to close communication networks, overlapping media markets, the shared attributes of nearby states, or something else" (p. 58). However, regional dynamics of policy diffusion have been found to be inconsistent and variable within the literature, largely depending on the type of policy involved, largely due to the inability of proxies to adequately measure this variable. Nonetheless, as studies have shown region to be significant at all in the literature, it would be a fruitful variable to pursue. Additionally, as this study does not make an inference about the propensity of neighboring states to diffuse these bills, a region variable is more useful for understanding trends across region where they exist.

Year

The data from this project was collected from a time period that saw a particularly intense flurry of abortion legislation introduced across the states. The 2009-2013 years presented a distinct phenomenon that was interesting and important to study. This period has multiple political occurrences that could be intervening events, or shape the overall political environment that allowed these bills the space to be introduced: President Barack Obama had become the nation's first Black president as of 2008, representing a new Democratic wave of political participation and power; the Affordable Care Act was passed in 2010, which in many ways shaped the debate around reproductive health; also in 2010, Republicans gained control of state legislatures and governorships, as well as regained power in Congress; in 2010-2013 Republican male politicians on the state and federal level were being criticized widely for engaging in a War on Women on issues including reproductive rights, but expanding to other women's issues as well. As such, this period is fascinating and represents a dynamic political open door for abortion legislation. It was important to understand whether there was a pattern over these years, whether the frame shows up in the later years more than the earlier, or whether there was a particularly active year or years.

Status or Success of Bill

Numerous variables and circumstances could determine whether a bill is ultimately successful or not; chief among these are relationships between lawmakers, salience of the policy issue being approached in the bill, political opportunity structures, and constitutionality of the bill. The vast number of abortion regulations introduced in all 50 states would lead one to believe that lawmakers were not practicing much restraint

when introducing these bills. Though this project specifically does not aim to hypothesize what compelled lawmakers to introduce this flurry of bills during this time, it was nevertheless, important to understand the successes of these bills. To be sure, this project does not claim that the frame had anything to do with the success of a bill; a bill could pass due to a litany of factors. However, as framing is important, ultimately, to how it is perceived by the public, and a rich literature in the field of representation has long established that lawmakers are concerned about their perception to the public and their re-election potential, any significant pattern in the success of bills using a pro-woman frame is of interest.

As such, I had coded the bills for legislative advancements, yielding up to 13 different categories of advancement. To simplify this variable, I decided to group these into two categories to represent the general stages of advancement or lack thereof: bills that had no action, and that were passed. Bills that were coded as having no action were carried over into the next session, died in committee, postponed, replaced, or left as pending. Passed bills were any that were explicitly passed through both houses, signed into law, and/or had the governor's veto overridden—in other words, truly successful bills that could be implemented into law. For this variable basically track the progress through the state legislature.

Quantitative Analysis

Due to the dichotomous nature of the dependent variable ProWoman, I used logit to assess the likelihood of the frame's existence and assess the impact of the dependent variables. If we consider the probability of the pro-woman frame existing, the equation for the logistic regression would be the following:

$$P(y=1) = \frac{e^{x\beta}}{1 + e^{x\beta}}$$

Including the variables:

$$P(\text{ProWoman}=1) = \frac{e^{(\beta_0 + \beta_1 \text{ Republican} + \beta_2 \text{ Northeast} + \beta_3 \text{ Midwest} + \beta_4 \text{ West} + \beta_5 \text{ Year})}}{1 + e^{(\beta_0 + \beta_1 \text{ Republican} + \beta_2 \text{ Northeast} + \beta_3 \text{ Midwest} + \beta_4 \text{ West} + \beta_5 \text{ Year})}}$$

I also conducted logistical regressions in the same fashion with the same variables on each subset—empowerment, ignorance, protection—as well as the fetal personhood frame.

Because I also coded for the status of the bill, I created a dichotomous variable that would indicate whether the bill passed (1) or not (0), and a second as to whether it had any action (1) or not (0). These two variables “passed” and “action,” were treated as dependent variables to test whether the frame had any impact on the success of the bill. I therefore used logit to analyze that question:

$$P(\text{Passed}=1) = \frac{e^{(\beta_0 + \beta_1 \text{ ProWoman} + \beta_2 \text{ Republican} + \beta_3 \text{ Northeast} + \beta_4 \text{ Midwest} + \beta_5 \text{ West} + \beta_6 \text{ Year})}}{1 + e^{(\beta_0 + \beta_1 \text{ ProWoman} + \beta_2 \text{ Republican} + \beta_3 \text{ Northeast} + \beta_4 \text{ Midwest} + \beta_5 \text{ West} + \beta_6 \text{ Year})}}$$

Bills – A Brief Description

As I included the type of bill in my database as a category, I was able to see which bills were more commonly introduced. Some bills contained multiple provisions in one bills. Sometimes known as omnibus bills, they could have five or more different provisions contained in one larger bill. For example, a bill could contain regulations on informed consent, anti-coercion, medical abortion, licensing for clinics and doctors,

funding, and a conscience objection clause, as does North Dakota’s HB 1297, which was ultimately signed into law by the governor in the spring 2011. Appendix B includes a rich description of all bill types included in this study, however, for the purposes of this chapter and the analysis conducted below, Table 1 provides a helpful brief description of all bill types. As indicated below, there are at least 15 different bill types ranging from bans to mandates.

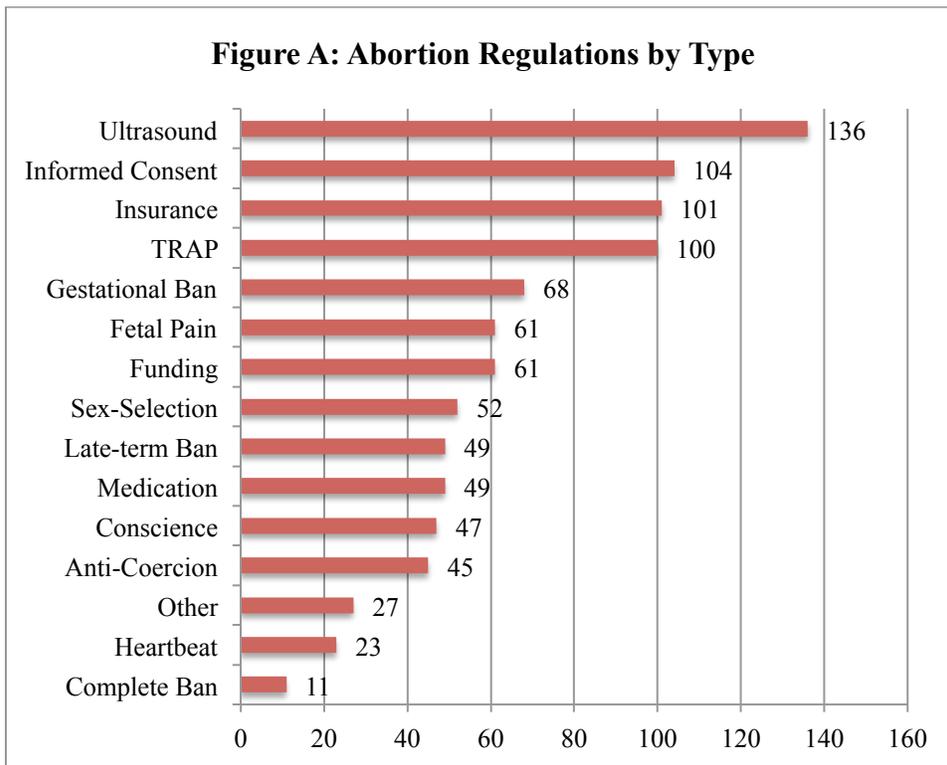
Bill Type	Description
Ultrasound Mandates	Often called “Right to Know and See Act.” Mandates ultrasound before abortion via abdominal or vaginal transducer. Ultrasound is situated as an aid in women’s decision-making. The doctor may not offer one so these laws uphold a woman’s right to get an ultrasound. Ultrasound screen must be in the woman’s line of vision but she has the right to not look.
Informed Consent	Mandates information to be given to women before abortions. Includes waiting periods from one hour to 72 hours. Women given state-produced booklets on fetal development and risks of abortion.
Insurance Opt-Out	Allows states to “opt-out” of the abortion coverage in the Affordable Care Act state exchange.
Targeted Regulation of Abortion Providers (TRAP)	Regulates the abortion provider and the clinic. Abortion providers are required to have admitting privileges at a nearby hospital. Clinics are required to conform to the standard of an ambulatory surgical

²⁴ The scope and breadth to which abortion regulations exist is remarkable. Advocacy organizations, or non-profits such as the Guttmacher Institute collect information on different types of regulations on abortion; however, to date, no formal scholarly work has detailed the multitudes of different types of abortion or how they are framed. In making this database with such level of detail publically available, it is my hope that it could be expanded in either direction—both bringing it up to date—and collecting data from as far back as the *Casey* decision in 1992 when states were permitted to regulate abortion under the undue burden standard. This collection of information is an important feat and a fruitful one for political scientists

	center, which means making costly structural changes to the building and purchasing certain medical equipment.
Gestational Bans	Ban abortion before the third trimester or viability, anywhere from 20-24 weeks.
Fetal Pain	Bans abortion after the point at which the fetus can feel pain—can be as early as 20 weeks.
Funding	Bans public funding of abortion, or any public facility from performing abortions.
Sex/Race/Ability Selection Bans	Bans abortion from being performed if the woman was seeking the abortion based on the sex, race, or the presence of disability of the fetus. Often called “Susan B. Anthony and Fredrick Douglass Prenatal Nondiscrimination and Equal Opportunity for Life Act.”
Late Term Bans	Bans a late term abortion procedure known as D&E or dilation and evacuation.
Medication Bans	Bans or places limitations on the use of nonsurgical abortion pills mifepristone and misoprostol. Bans the use of telemedicine that allows the doctor to prescribe medication via telecommunication.
Conscience Clauses	Allows healthcare professionals to refuse to participate in abortion in any way.
Anti-Coercion Clauses	Requires pre-screening for coercion. Also requires clinics to hang signs indicating that women cannot be coerced into abortion.
Heartbeat Ban	Bans abortion after the point at which a fetal heart tone can be heard, which can be as early as 6-8 weeks. Usually overturned or enjoined due to being unconstitutional.
Complete Bans	Bans abortion completely. Unconstitutional, and always overturned.
Other	Bills that are hard to categorize, such as those that redefine bodily harm.

Though there are different types of bills, they are not introduced with the same frequency across states. Certain bills tend to be more popular than others; for example, only 23 heartbeat ban bills have been introduced in the states, whereas 100 TRAP laws have been

introduced. This high variation in frequency could be because of the bill type itself—heartbeat bans being unconstitutional, not many policymakers find it useful to spend their time or resources on a bill that has no chance of being implemented. However, other bills tend to be more popular because they are relatively new and enjoying swift policy diffusion, such as TRAP laws. Figure A shows the frequency of bill types introduced in the states.



Descriptive Statistics and Bivariate Relationships

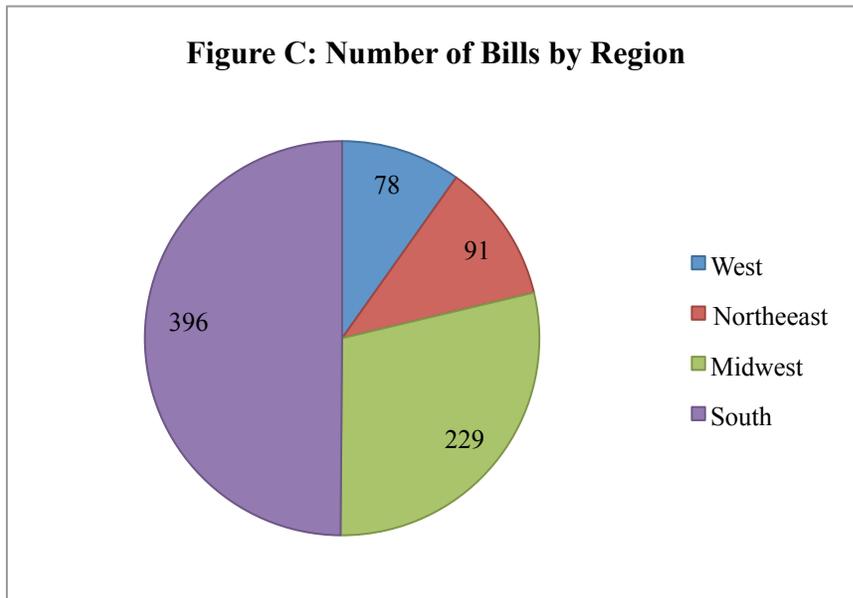
Looking first at the descriptive statistic and some simple bivariate relationships, we see that there is significant variation of the bills themselves over time, region, and party. In the tables below I examine the variation in use of the different frames by region,

party of the sponsor, and year. This, as we can see below, was a way to understand some of the cross state variation and trends present in the bills using the different frames.

With regards to the years in which these bills were collected, as mentioned previously, this was a particularly active time for abortion legislation. The regulations follow a slow, but relatively steady upward trend overall, with the noticeable exception of 2011. In 2009, 114 regulations were introduced throughout the states, decreasing slightly to 104 in 2010. However, in 2012 and 2013, the numbers increase significantly to, respectively, 147 and 163 bills introduced. (See Figure B). The biggest explanatory factor for the 2011 outlier of 266 bills introduced is the passage of the Affordable Care Act (ACA) in 2010. Because of this federal legislation, states had the option of rejecting the ability to provide coverage for abortion in the state exchange. As such, the legislation on this issue was particularly salient following the ACA.



The regions had a distinct dynamic, with the South noticeably more active in introducing regulatory abortion measures, with the Midwest a distant second. (See Figure C).



In terms of party breakdown, not surprisingly, Republicans were more frequent sponsors and cosponsors of abortion regulations, accounting for 81% of all bills introduced. Though, interestingly, these bills did enjoy bipartisan support in 11% of the cases. Democrats were only sponsors on about 7% of the bills.

Table 2: Partisan Sponsorship

Democrats	Bipartisan	Republican
50 (6.6%)	87 (11.3)	626 (81)

When looking at legislative advancement and bill success across states, the percentage of regulatory abortion bills that get passed (19%) is slightly below par with

the average of all bills (25%).²⁵ Of course, as state politics scholars have long noted, states vary widely in terms of the percentage of bills passed. This can be due to institutional factors such as how often they are in session, professionalization of the state legislature, activity from external political actors such as interest groups, or the culture of the state legislature.

Table 3: Legislative Advancement

No Action	Died	Passed
77 (9.8%)	553 (70.6)	149 (19)

To summarize some of these basic empirical results and descriptives of the variables, Republicans and the Southern states were most frequently active on sponsoring regulatory abortion bills. The bills steadily though slowly increased over time, with the exception of an explosion of bills in 2011 following the passage of the ACA and the states' ability to opt out of abortion coverage in the state exchange. Lastly, the bills were just about as successful as the national average among states, yielding a roughly 19% success rate of passage and ultimately, implementation. Though the outlook of the empirics of these variables are important, even more so is the meat of the analysis—the framing of the bills.

Pro-Woman Frame: General

In general, the pro-woman frame was present in 554 of the 794 bills (70%), as indicated in Table 4. This is not to say that other frames were not present. Most bills utilized more than one frame, including the fetal personhood frame, used in 307 of the bills (39%).

²⁵ Based on a study conducted by CQ Roll Call StateTrack which compared Congressional bill success with the average of individual states' bill success during 2013-2014. <http://cqrollcall.com/statetrackers/states-six-times-more-productive-than-congress/>. Though, it should be noted that states vary widely as to how many bills are introduced and how many are passed.

Table 4: Frame Usage In All Bills

Pro-Woman Frame	Fetal Personhood
554(69.8%)	307 (38.7)

I can therefore confirm my hypothesis that the pro-woman frame is being deployed significantly and frequently throughout regulatory abortion bills introduced in the states from 2009—2013, as well as my hypothesis that it is used with greater frequency than the fetal personhood frame. Of course, it is also important to consider the co-occurrence of these frames, and what that means in terms of the overall antiabortion narrative, which is discussed further below. Upon conducting crosstabs to assess the significance of these co-occurring frames, it was evident that the pro-woman frame did appear in the same bills as the fetal personhood frame.

Table 5: Frame Co-occurrence

	Pro-woman Frame Present	Pro-woman Frame Absent
Fetal Personhood Frame Present	264	43
Fetal Personhood Frame Absent	290	197

Cells represent the number of bills.

The overlap of the pro-woman frame with the fetal personhood frame, indicates an important level of nuance to this woman-centered approach: that lawmakers may be taking a “love them both” approach to framing abortion regulations.²⁶ Reluctant to jump entirely on the pro-woman bandwagon, they are marrying the fetal personhood and pro-

²⁶ This frame, as used in antiabortion social movement organizations “posit[s] a connection between the fetus and the woman that undermines the antagonism between the rights of the fetus and the rights of the woman that pervades legal debates on abortion” (Halva-Neubauer and Zeigler 2010, 110).

woman frames, thus connecting the woman and her fetus in a way that has not been seen since the early antiabortion movement.

Moving on to the logistical regression, the pro-woman frame did not yield any significant results as to the likelihood of usage across variables such as party or sponsor, year, region, or status of the bill. However, nor did the fetal personhood frame. (See Table 6 for a full model of each frame). The usage of the pro-woman frame suggests that it is being widely used without domination by one particular group or region. This finding, along with the frequency of the frame is indicative of the ubiquity among lawmakers across the states. However, as the pro-woman frame is comprised of separate though interrelated subsets, it was important to examine the use of each among the same set of variables.

Table 6: Logistic Regression of Frame Use

	Model 1 Pro-Woman	Model 2 Fetal Personhood
Republican	-.338 (.220)	-.189 (.194)
Northeast	.167 (.267)	.067 (.243)
Midwest	.172 (.191)	.045 (.176)
West	.096 (.266)	-.039 (.261)
Year	.038 (.062)	-.031 (.576)
<u>Model Fit</u>		
Pearson's χ^2 (df = 32)	45.62	37.20
Prob. > χ^2	.056	.242
Pseudo R^2	.005	.002

N = 773

*significant in a one-tailed test at the $p < .10$ level, **significant in a one-tailed test at the $p < .05$ level, ***significant in a two-tailed test at the $p < .01$ level

Democrat and South omitted as reference categories. Standard errors in parentheses.

Pro-Woman Frame: Empowerment, Ignorance, Protectionism

I wanted to explore each subset of the multi-faceted pro-woman frame, as each is theoretically distinct enough to warrant further analysis. These subsets were variably

frequent throughout the bills, with the protectionism element by far the most often appearing at 58% present. The empowerment and ignorance categories appear much less frequently at 39% and 12% respectively. (See Table 7).

Table 7: Frame Subset Frequencies

	Empowerment	Ignorance	Protectionism
Presence of Frame	310 (39%)	103 (12%)	462 (58%)

In a logistical regression, with the empowerment subset as a dichotomous variable, we can see that this frame is more likely to be used in the Northeast, though no other regional pattern existed. (See Table 8).

Table 8: Logistic Regression of Frame Subset Use

	Model 1 Empowerment		Model 2 Ignorance		Model 3 Protectionism
		Marginal Effects (dy/dx)		Marginal Effects (dy/dx)	
Republican	-.289 (.193)		.061 (.282)		.296 (.192)
Northeast	.708 (.241)**	.169 (.058)	1.34 (.287)***	.144(.030)	-.003 (.241)
Midwest	.215 (.176)		-.235 (.293)		.026 (.174)
West	-.002 (.263)		.052 (.392)		.206 (.259)
Year	-.035 (.058)		-.11 (.085)		.042 (.057)
<u>Model Fit</u>					
Pearson's χ^2 (df = 32)	49.82		33.67		43.96
Prob. > χ^2	.023		.387		.077
Pseudo R ²	.014		.048		.004

N = 773

*significant in a one-tailed test at the $p < .10$ level, **significant in a one-tailed test at the $p < .05$ level, ***significant in a two-tailed test at the $p < .01$ level

Democrat and South omitted as reference categories. Standard errors in parentheses.

As it is popularly used in the Northeast, which boasts a majority of Democratic or “blue” states, the appeal of this quasi-feminist empowerment or “rights” language cannot be ignored. The empowerment frame is 6% more likely to appear in bills from the Northeast.

The ignorance subset was also more likely to be used in Northeastern states by 3%. As the ignorance subset is so closely theoretically related to the empowerment subset, with lawmakers purporting to want to give women more information so that they may make an “informed” decision, it was not surprising to see this frame extension more likely used in the Northeastern “blue” states. Interestingly, the protectionism subset did not follow any kind of significant pattern when looking into cross-state variation. Surprisingly, no clear pattern emerged for the use of the protectionism subset.

Status

Tables 9-11 indicate the effect of the various frames on the legislative status of the bills. As a reminder, I used two measures of legislative advancement, both dichotomous variables. The first was whether the bill was ultimately passed, and the second was whether it made it past committee—in other words, whether there was any activity on the bill. As seen in Table 9, the pro-woman frame did not significantly effect whether the bill was passed, however it did have a slight effect on advancing through the legislature by about 3%. Bills in the Northeast were about 6% less likely to be passed or have any activity overall, whereas in the West, bills were 4% more likely to be passed.

Table 9: Logistic Regression of Passed Bills and Bills with Activity

	Model 1 Passed		Model 2 Activity	
		Marginal Effects (dy/dx)		Marginal Effects (dy/dx)
Pro-Woman	.288 (.214)		.387 (.204)*	.064 (.033)
Republican	-.313 (.244)		-.355 (.231)	
Northeast	-1.02 (.422)***	-.149 (.062)	-1.27 (.419)***	-.208 (.069)
Midwest	.315 (.213)		.319 (.200)	
West	.539 (.300)*	.079 (.044)	.379 (.292)	
Year	.173 (.074)***	.026 (.011)	.167 (.069)**	.027 (.011)
<u>Model Fit</u>				
Pearson's χ^2 (df = 65)	65.57		58.47	
Prob. > χ^2	.457		.703	
Pseudo R ²	.005		.037	

N = 773

*significant in a one-tailed test at the $p < .10$ level, **significant in a one-tailed test at the $p < .05$ level, ***significant in a two-tailed test at the $p < .01$ level

Democrat and South omitted as reference categories. Standard errors in parentheses.

Dissimilarly, with regards to the fetal personhood frame, logistic regression indicated no significant effect of the fetal personhood frame on either passed bills or bills moving out of committee. In both instances of the pro-woman frame and the fetal personhood frame, the Northeast bills are less likely to advance in state legislatures by about 6%—which is not surprising given the dominance of Democrats in the legislatures in Northeast states. Additionally, as expected, as the years progress, bills using both frames are more likely to be successful. Comparing tables 9 and 10, it is interesting that, though slight at 3%, the bills using a pro-woman frame were more likely to at least see more activity and move from committee than the bills using the fetal personhood frame.

Table 10: Logistic Regression of Passed Bills and Bills with Activity

	Model 1 Passed		Model 2 Activity	
		Marginal Effects (dy/dx)		Marginal Effects (dy/dx)
Fetal Personhood Republican	.105 (.191)		.268 (.179)	
Northeast	-.332 (.243)	-.151 (.062)	-.376 (.230)	-.210 (.069)
Midwest	-1.02 (.423)***		-1.27 (.421)***	
West	.321 (.213)	.078 (.044)	.327 (.200)*	
Year	.530 (.299)*	.026 (.011)	.372 (.292)	.029 (.011)
	.177 (.074)***		.174 (.069)**	
Model Fit				
Pearson's χ^2 (df = 67)	75.01		77.05	
Prob. > χ^2	.234		.188	
Pseudo R ²	.028		.035	

N = 773

*significant in a one-tailed test at the $p < .10$ level, **significant in a one-tailed test at the $p < .05$ level, ***significant in a two-tailed test at the $p < .01$ level

Democrat and South omitted as reference categories. Standard errors in parentheses.

Discussion and Conclusions

Throughout this chapter, the deployment of the pro-woman frame was analyzed for frequencies, trends, and patterns in variation across region, party, year, and status. As shown in the empirical analysis, the pro-woman frame is used quite significantly across all 794 bills in the states during the five-year period investigated here. The pro-woman frame can be broken into three interrelated elements—empowerment, ignorance, and protection—all of which use distinct rhetorical tactics and tropes to situate women, doctors, and the state in particular relationships that enable or justify regulatory laws. The protectionist subset, the one that purports to protect women from harmful doctors and dangerous abortion procedures, is by far the most frequently used.

In terms of the variation of use of the frame across regions, there is little regional difference with the exception that the Northeast is 6% more likely to use the empowerment, and ignorance subsets. The empowerment subset seems to be enjoying the most success in terms of legislative advancement than the other subsets or the pro-woman frame as a whole. Other than those, there seems to be little pattern to the frame use. This suggests that it is used widely and perhaps indiscriminately by Republicans and Democrats alike, and in most regions as well. In terms of bill advancement, bills using a pro-woman frame were 3% more likely to at least pass out of committees. Ultimately, because the exploration of the pro-woman framing of abortion is relatively uncharted territory, it is imperative to explore the nuances and effects along numerous variables. Certainly, future studies could include other variables where applicable and accessible; for example, religiosity of sponsors, race of sponsors, professionalization of state legislatures, and interest group activity.

The use of the pro-woman frame overall has significant impact on the effect of the bill on the public's perception, and on the ability of policymakers to direct the narrative around the regulations they introduce and support. When policymakers can frame abortion regulations as pro-woman, they can explicitly suggest that they are looking out for their female constituents' best interests—that they are empowering their rights to pre-abortion information, that they are increasing their knowledge about pregnancy so that they can be informed decision-makers, and that they are protecting them against potentially dangerous doctors and unsafe clinics. Of course, these assertions and intents take on a different meaning when we consider the gender of the legislator. For this analysis, in the next chapter, I look at the gender of bill sponsor and include an in depth

case study on what happens when Democratic women lawmakers introduce regulatory abortion policies.

Chapter 4: Legislator Gender and Framing of Abortion Regulations

From Chapter 1, we have learned that women in the antiabortion movement have long advocated for a shift in the framing of abortion regulations from fetal-centric, to pro-woman. However compelling conservative and antiabortion movement activists are, and though they may provide pre-drafted legislation, they are not our elected officials. There are different political consequences when elected officials choose to use this particular frame of abortion and introduce it into the formal institutions of government; specifically, it signals that those who use it represent the interests of women. Furthermore, when women lawmakers use this frame, it reinforces their claims of representation. Actions like these by women lawmakers provide a compelling site for investigation for scholars of women and politics. How do we as scholars understand women lawmakers with legislative standpoints that are contrary to contemporary understandings of women's rights and empowerment, especially when they claim to be acting for women?

In this chapter, I examine the gender dynamics at work in the use of the pro-woman frame in abortion regulations. In addition to outlining the frequency of introductions of regulatory abortion bills, and types of regulations women sponsor, I determine the likelihood of women lawmakers' use of the pro-woman frame, its subsets—empowerment, ignorance, and protectionism—as well as the use of the fetal personhood frame. As Democratic women lawmakers emerged as an interestingly active group in certain states, I explore their positions in detail. In Louisiana, in particular, an intersectional dynamic emerges, where race and class considerations aid in the understanding of antiabortion women lawmakers' claims to being pro-woman.

Background: Legislator Gender and Representation

A rich literature in the field of women and politics has shown that women lawmakers make a “profound and distinctive” mark on public policy (Carroll, Dodson, & Mandel, 1991, 5; Carroll, 2001). Women are more likely to be seen as—and believe they are—experts on women’s issues, and are more likely spotlight these issues by placing them on the political agenda (Reingold, 1992; Dolan and Ford, 1995; Carroll, 2001; Swers, 2002). Though the differences in policy preferences, leadership style, agenda setting, and voting seem clearly gendered, the connection between women’s substantive and descriptive representation “is by no means guaranteed or automatic” (Reingold, 2008, p. 17). Pitkin’s groundbreaking work on representation underscores the importance of substantive representation, or “acting for” women. Debates have swirled around whether a “critical mass” of women in a governing body is needed for women make significant headway in acting for women.²⁷ However, scholars of women and politics have begun to explore the very question of substantive representation of women: since women are not a monolithic block, which group of women is being represented, and how do policymakers claim that they are representing these women? (Celis and Childs, 2012; Lovenduski and Guadagnini, 2010). The question of substantive representation becomes problematic if we assume women are united across all issues. Certainly there are conservative women who claim they are representing the interests of women as well. Celis and Childs (2012) have folded these claims by conservative women policymakers into substantive representation as they feel “...it more explicitly acknowledges

²⁷ For an excellent sampling of the critical mass debate and research, see the December 2006 issue of *Politics and Gender*, which includes a critical perspective collection entitled “Do Women Represent Women? Rethinking the “Critical Mass” Debate.”

ideological and partisan differences among women which ... we consider essential for a good theory of the substantive representation of women,” (p. 219).

Legislative Gender and Political Party

So, how likely are women lawmakers to act “for women?” The immensely compelling work of scholars who focus on gender representation in elected office have shown that there is a positive relationship between bill introduction on women’s issues and gender in state legislatures, though it is conditioned by party (Osborn, 2012, p. 104). On the issue of abortion, Sanbonmatsu (2004) writes that “[i]n 1976, the [party] platforms diverged on abortion for the first time,” (p. 181). Presidential candidates could use the *Roe* decision to come out for or against abortion and solidify it within the Republican platform as Reagan did²⁸; or choose a different path, as President Ford initially did, asserting that abortion is a state issue (p. 181). As political parties in the US became increasingly polarized, so did their stance on abortion, among other morality issues (Layman et al., 2006). On the national level, Democrats’ and Republicans’ the gap in voting behavior on abortion from 1973-1994 widened substantially with Democrats voting more consistently for pro-choice legislation and Republicans for antiabortion legislation. Their positions, additionally, have become more distinct; a change that Adams (1997) deems fit to be classified as an issue evolution. However, from the vast scholarship on women in politics, we also know that women elected officials do not always match the ideology of their party: Republican and Democratic women tend to be more liberal than their male counterparts. Women lawmakers also support more liberal legislation women’s issues, though Democratic women more so than Republican women

28 Candidate Reagan twice received an endorsement from the National Right to Life Association (Granburg 1987). Additionally, President Reagan also wrote a book “Abortion and the Consciousness of a Nation” that espouses an ardent antiabortion viewpoint.

(Reingold 2006; Carroll 2001; Swers 1998; Dolan 1997; Dodson and Carroll 1991). How, then does this effect women lawmakers' legislative activity and framing of a highly contentious and polarizing issue such as abortion?

Osborn's (2012) case study evidenced that Republican men were the most active in introducing antiabortion legislation in nearly every state in her sample, except for Texas where Republican women were as likely as their male colleagues to introduce abortion bills.²⁹ In an updated study, Reingold, et al. (2015) show that conservative Republican women in state houses from 1997-2012 were more likely to sponsor antiabortion bills, even compared to their conservative male colleagues, and were even more likely when the bill used a pro-woman frame. On a federal level, Swers (2002) notes that in the 104th Congress (1995-1997), Republican women, particularly those who were considered freshmen, were not as likely to introduce *any* women's issues legislation (40). Republican women on abortion issues, however, were just as likely to cosponsor regulatory abortion measures as their male colleagues (p. 64). Swers indicates that perhaps some other variable is at work; one that may be mitigating the effects of substantive representation by new Republican women lawmakers. Reingold (2006) referencing Swers' 2004 study suggests that "[t]he election of more conservative women, the new Republican majority, and the more ideologically polarized climate all seemed to conspire to weaken the links between women's descriptive and substantive representation in Congress," (p. 18). Despite the impressive and burgeoning scholarship in the field, the idea of acting for women continues to be a site of examination (Pitkin, 1967; Carroll, 2001). This quandary is precisely where this project seeks to intervene.

²⁹ Osborn's sample comes from a 10 state case study during 1998 including Arkansas, Illinois, California, Michigan, Colorado, South Dakota, Georgia, Texas, Washington, and Wisconsin.

Considering the substantial increase in number of abortion bills introduced since 2009, it is important to investigate the role and behavior of women legislators relative to this phenomenon. It is necessary to find out whether they are towing the party line along with their male counterparts in introducing abortion bills as their numbers increase and abortion regulation remains en vogue, or whether they are at the heart of the increase in regulatory abortion bill introduction, as the Reingold et al. study suggests. Furthermore, bill introduction and sponsorship is only part of the story. This study adds significantly to the literature in seeking to understand women's legislative behavior on the state level. Namely, it asks, when women introduce regulatory abortion bills, are they more likely to use the pro-woman frame? The shift in focus from agenda setting to issue framing and use of a pro-woman frame would compel scholars to expand the scope of substantive representation. By claiming to represent the issues of women vis-à-vis regulatory abortion bills, women lawmakers are redefining women's issues, and perhaps appropriating what it means to be a champion of women's rights.

The nature of the rhetorical shift in the issue framing of abortion is quite momentous, and if women legislators are at the heart of it, it speaks volumes to their ability to link descriptive and substantive representation. If not, though, the presence and persistence of the pro-woman frame among state lawmakers is still an incredibly fruitful area of research and one that has not yet been fully examined by scholars. Deeper research into the elite usage of the pro-woman frame in the states could show how women are constructed through rhetoric and roles as they are codified in regulatory abortion policies.

Hypotheses

For this portion of the project, based on the literature on gender and representation discussed above, I test a few hypotheses:

H1: Women lawmakers are less likely than their male colleagues to introduce antiabortion measures.

I expect to find women lawmakers less active in introducing regulatory abortion bills overall, as previous studies have found that men were far more likely to introduce such bills. If a null finding occurs for this hypothesis, it would suggest that women are introducing or sponsoring more abortion bills in the current era than previously, signifying a shift in the legislative behavior of women lawmakers. Perhaps women lawmakers are more emboldened to introduce and support these bills by something in the political environment. Or perhaps they are emboldened by a new and more palatable framing, which is where the second hypothesis comes in:

H2: When women lawmakers introduce antiabortion legislation, they are more likely than men are to use a pro-woman frame

A null finding here would be that women are not using a pro-woman frame any more often than men are. This would be important to study further because it could indicate a lack of substantive representation. A positive finding would suggest the opposite: that women are distinctly linking their substantive and descriptive representation—they are women acting for women. This would also be important because it would signify that women lawmakers are recognizing and categorizing abortion regulations as being positive for women.

On the intersection of gender and party:

H3: Republican women are more likely to introduce antiabortion legislation.

H4: When Democratic women introduce antiabortion legislation, the bill is more likely to be framed as pro-woman.

Scholarship about the partisan behavior of women legislators suggests that Republican women would be more likely to introduce antiabortion legislation overall. Since women lawmakers are not monolithic, we cannot discount the possibility of Democratic women lawmakers introducing antiabortion bills. However, we know that Democratic women theoretically might be more drawn to a “rights-based” language such as that found in the pro-woman frame due to their propensity to want to represent women’s issues. If Republican women are found to use the pro-woman frame it could indicate a need to utilize framing elements in a more significant way as to signal that they are representing their women constituents.

Furthermore, on the different frame subsets—empowerment, ignorance, and protectionism—I expect there to be significant variation in use by Democratic and Republican women. Because no scholarship exists on the subsets, per se, I can only make a best guess based on the ideological propensities of women lawmakers, as Democratic women are more likely to support feminist issues:

H5: Republican women are more likely to use the protectionism frame subset.

H6: Democratic women lawmakers are more likely to use the empowerment frame subset.

As noted above, no study to my knowledge has broken down the pro-woman frame into subsets with distinct variation on language and meaning. Therefore, any finding on this

level would be interesting and a significant contribution, setting the stage for further investigation.

Methods and Data

Building off of the methods and data described in detail in Chapter 3, I organized and coded women's involvement on regulatory abortion bills. I use a dichotomous variable of "Woman Involved" to show that a woman was active as *either* a sponsor or a cosponsor on the bill. I also prepared separate variables for women who specifically were sponsors and women who were co-sponsors.

When conducting the logistical regressions on each dependent variable including the pro-woman frame, each pro-woman frame element, and the fetal personhood frame, I used the following:

$$P(\text{ProWoman}=1) = \frac{e(\beta_0 + \beta_1 \text{WomanInvolved} + \beta_2 \text{Republican} + \beta_3 \text{Northeast} + \beta_4 \text{Midwest} + \beta_5 \text{West} + \beta_6 \text{Year})}{1 + e(\beta_0 + \beta_1 \text{WomanInvolved} + \beta_2 \text{Republican} + \beta_3 \text{Northeast} + \beta_4 \text{Midwest} + \beta_5 \text{West} + \beta_6 \text{Year})}$$

Additionally, I created a dummy variable for Republican and Democratic women only to capture the interaction between party and gender, and assess the variation of the women in both parties:

$$P(\text{ProWoman}=1) = \frac{e(\beta_0 + \beta_1 \text{RepublicanWomen} + \beta_2 \text{Northeast} + \beta_3 \text{Midwest} + \beta_4 \text{West} + \beta_5 \text{Year})}{1 + e(\beta_0 + \beta_1 \text{RepublicanWomen} + \beta_2 \text{Northeast} + \beta_3 \text{Midwest} + \beta_4 \text{West} + \beta_5 \text{Year})}$$

I conducted this same analysis for each subset as well as the fetal personhood frame.

The distinction between whether there was a woman involved or not was to access the probability of frame use by gender. However to go one step further, I also test for whether the woman was a primary sponsor or a co-sponsor.

$$P(\text{ProWoman}=1) = \frac{e(\beta_0 + \beta_1 \text{WomanSponsor} + \beta_2 \text{Republican} + \beta_3 \text{Northeast} + \beta_4 \text{Midwest} + \beta_5 \text{West} + \beta_6 \text{Year})}{1 + e(\beta_0 + \beta_1 \text{WomanSponsor} + \beta_2 \text{Republican} + \beta_3 \text{Northeast} + \beta_4 \text{Midwest} + \beta_5 \text{West} + \beta_6 \text{Year})}$$

The sponsorship distinction, however, was important to understand a different side of gender and legislative behavior: the public nature of being a sponsor. Being a primary sponsor on a bill involves more involvement than being a co-sponsor for multiple reasons; on the surface, a legislator's name will be first, and they will be the public face of this bill. From an institutional perspective, the bill sponsor is responsible for drafting the bill, filing it, defend it on the floor, and amend it, if necessary. For the purposes of this project, women sponsors are compelling subjects—already singled out for their underrepresentation, and often thought of as experts on women's issues.

Lastly, similar to my analysis in Chapter 3, I also analyze the effect of the various frames on the success of the bills, this time with gender included in my model:

$$P(\text{Passed}-1) = \frac{e(\beta_0 + \beta_1 \text{ProWoman} + \beta_2 \text{WomanInvolved} + \beta_3 \text{Republican} + \beta_4 \text{Northeast} + \beta_5 \text{Midwest} + \beta_6 \text{West} + \beta_7 \text{Year})}{1 + e(\beta_0 + \beta_1 \text{ProWoman} + \beta_2 \text{WomanInvolved} + \beta_3 \text{Republican} + \beta_4 \text{Northeast} + \beta_5 \text{Midwest} + \beta_6 \text{West} + \beta_7 \text{Year})}$$

I conduct the same analysis for the activity variable as well.

At this juncture, it is important to understand the general political outlook for women in state legislatures. According to the Center for American Women and Politics

(CAWP) and their extensive resources and research, the average percentage of women in state legislatures during the time period under investigation in this project is around 24%. As of the time I write this, 2017, the percentage is 24.9%; 60.4% of which are Democrats, and 38.4% Republican. Though women represent more than half of the country's population, gender parity in political office has not yet occurred in the U.S. The states range from a low mean of 10.5% for South Carolina, to 39.4% for Colorado. (See Appendix C for a full chart of percentages of women in state legislatures during the time of this study).

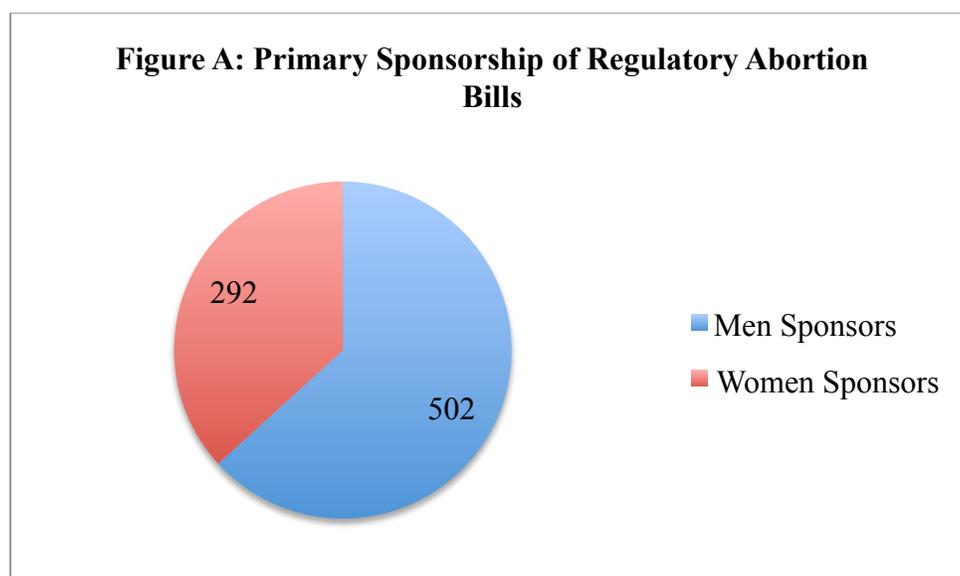
In order to answer some of the pressing questions addressed by scholars of women and politics, this research focuses directly on how women state lawmakers act on a specifically woman's issue. However, going beyond legislative behavior via voting or bill introductions, this project analyzes the framing employed by lawmakers. This way, we can understand not just how women lawmakers act, but how they justify their actions, and in turn, how they are claiming to represent their constituents. Additionally, to examine the topic more deeply, I conducted a case study on the state of Louisiana. This case study was important in understanding how atypical antiabortion lawmakers—Democratic women of color—frame and justify their support of these regulations. For this case study, I turned to their words, in lieu of formal interviews, using legislative committee hearing testimony archived by the Louisiana state legislature. Together, these mixed methods provide a richer story about gender and representation and how women are situating their relationships to their constituents on reproductive health issues. To see how this all materializes across the states, we turn now to the gender findings.

Findings

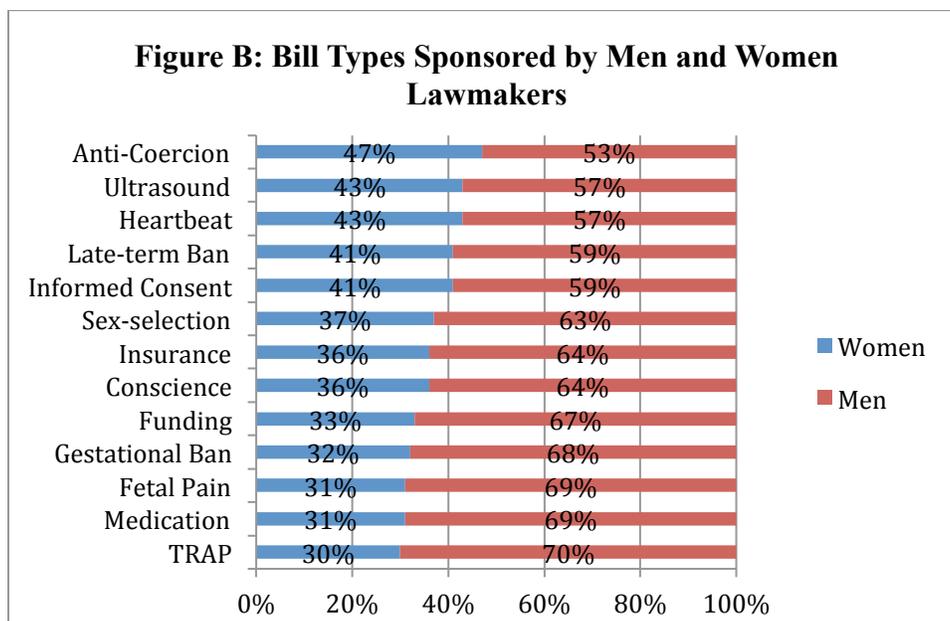
Similarly to the previous chapter, women lawmaker's use of the pro-woman frame was significant, though nuanced. There was a disproportionate of women as primary sponsors of these bills, compared to bills overall, but the frame usage differed widely between Republicans and Democrats. As detailed below, women lawmakers were active, but framed bills in very different ways.

Women-Supported Bills

Overall, women were quite active on introducing and supporting regulatory abortion measures. In terms of the basic gender breakdown, women were primary sponsors on 292 bills, or 37% of bills. (See Figure A below). Recollecting that the average mean of women in state legislatures being 24%, it is clear that women are disproportionately active on regulatory abortion measures. Expanding women's involvement on regulatory abortion bills to include co-sponsorship as well, where at least one woman was involved in supporting a bill, this number balloons to 399, or 50% of the bills.



Although women lawmakers were active on introducing and supporting abortion regulations, they were active on different kind of bills than their male counterparts. As appears in Figure B below, women lawmakers were active on sponsoring anti-coercion bills far more than male legislators. Though it is difficult to evidence a pattern in the type of bills, the fact that men and women lawmakers differ quite dramatically on the type of regulations is compelling. For instance, men were far more likely to introduce TRAP regulations (part of the protectionism subset).



On a cursory empirical glance, however, one can also see that heartbeat and late-term bans were popular among women lawmakers. These bills were largely fetal-centric. However, this distinction must be understood along partisan lines. When analyzing women sponsors by party, it became clear that Republican and Democratic women lawmakers were the primary sponsors on different kinds of abortion bills. (See Table 1). Democratic women, where they do introduce regulatory abortion bills, are most active on coercion bills, and sex/race/ability-based bans, with primary sponsorship accounting for

9% and 8% of bills respectively. These bills are both firmly rooted in pro-woman language.

Republican women, alternatively, are far more active on heartbeat bills, which accounted for 43% of Republican woman sponsorship. They were also quite active on ultrasound, and informed consent bills, their sponsorship accounting for 39% of bills for each. It is important to note, as discussed in greater detail below, both of these bills frequently use fetal personhood frames—especially in conjunction with pro-woman frames. In an act of bipartisanship, Republican women were also active on anti-coercion measures at 39% support. Funding bills garnered the most significant bipartisan effort, followed closely by late term bans, and conscience clauses. The later two bills—late term bans and conscience clauses—might be bills that Democratic women lawmakers find more politically expedient to support. Both of these bills suggest “common sense” regulations on abortion, that do not, at least on the surface, impinge on women’s access and rights to abortion. Conscience clauses would simply protect medical professionals from taking part in abortion. Similarly, late term bans would simply ban abortion after fetal viability, or ban particular procedures often portrayed as gruesome. Late term bans are something that the public can get behind. In fact, according to polls conducted by Marist, Quinnipiac, and the Washington Post, among others, slightly over half of the general public (56%) would be supportive of 20 week bans as of 2013.³⁰ Even Democratic presidential nominee Hillary Clinton expressed favoring late term bans up to viability, or between 24-28 weeks. However, intervening events since then included such reproductive health crises as the Zika virus, which conditioned people’s responses with

30 See https://www.washingtonpost.com/news/the-fix/wp/2015/01/22/the-most-surprising-part-about-the-gops-failed-20-week-abortion-ban-push-it-was-popular/?utm_term=.1d0962df3291

59% in a STAT-Harvard poll replying that they would support abortion after 24 weeks if a woman was effected by the Zika virus.³¹ Nevertheless, this remains an area where partisan crossover is likely.

Table 1: Bill Types by Party

Type	Republican	% total	Bi-Partisan	% total	Democrat	% total
Ban	24	32%	0	0	1	1%
Coercion	17	39%	0	0	4	9%
Conscience	14	30%	1	2%	2	4%
Funding	14	23%	3	5%	3	5%
Heartbeat	10	43%	0	0	0	0%
Informed Consent	40	39%	1	1%	2	2%
Insurance	32	32%	2	2%	2	2%
Medication	15	31%	0	0	0	0%
Pain	19	31%	0	0	0	0%
Late term	17	34%	1	2%	2	4%
Sex-selection	15	29%	0	0	4	8%
TRAP	29	29%	1	1%	0	0%
Ultrasound	53	39%	3	2%	8	6%

Though the type of bills women lawmakers sponsor is a compelling unit of analysis, we also know that these bills have the propensity to contain numerous and nuanced frames. As such I turn to the frame usage among women lawmakers—the most expedient way to answer the question: do women lawmakers use the pro-woman frame more frequently in regulatory abortion bills?

Frame Usage

As stated above, scholars have pointed to women lawmakers as claims-making about their representation of their women constituents. There are two main questions regarding representational claims-making: how are women representing women as a group and which women are being represented; and, how do lawmakers classify women's

31 <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/94/2016/08/STAT-Harvard-Poll-August-2016-Zika.pdf>

best interests? One of the best ways to approach these complicated questions is looking at the framing and discourse used by the lawmakers themselves. If women lawmakers introduced regulatory abortion bills—bills that would have a potentially negative effect women’s access to abortion, and the most vulnerable women at that—but were framing those bills as in women’s best interests, they were unambiguously signaling that they were acting *as* and *for* women.

Pro-Woman Women

When women were involved in sponsoring legislation, were they more likely to use the pro-woman frame? Logistical regression concluded that indeed, if women were involved in the bill, it was 3% more likely to use a pro-woman frame. (See Table 2 below). I expected as much from the theoretical and scholarly grounding of this hypothesis. However, women were also as likely (4%) to use the fetal personhood frame.

Table 2: Relationship Between Women Lawmakers and Frame Use

	Model 1 Pro-woman	Marginal Effects (dy/dx)	Model 2 Fetal Personhood	Marginal Effects (dy/dx)
Woman Involved	.299 (.165)*	.062 (.034)	.471 (.156)***	.109 (.036)
Republican	-.302 (.221)		-.134 (.196)	
Northeast	.078 (.272)		-.071 (.249)	
Midwest	.098 (.195)		-.074 (.182)	
West	-.144 (.268)		-.115 (.263)	
Year	.036 (.062)		-.034 (.058)	
<u>Model Fit</u>				
Pearson χ^2 (64)	67.12		72.08	
Prob > χ^2	.371		.228	
Pseudo R ²	.009		.011	

N= 773

*significant in a one-tailed test at the $p < .10$ level, **significant in a one-tailed test at the $p < .05$ level, ***significant in a two-tailed test at the $p < .01$ level

South and Democratic variables held as reference group. Standard errors in parentheses.

Since we also know that the pro-woman frame has several elements, it was necessary to see how women used each subset of the pro-woman frame—empowerment, ignorance, and protectionism. As a brief reiteration, in the empowerment subset, “rights” language, or pseudo-feminist language are the major components. In the ignorance subset, the language assumes women’s inherent ignorance of pregnancy, the fetus, and abortion. And in the protectionist subset, the language includes protecting the health and best interests of the woman seeking abortion.

As might be expected, when women were involved on a bill, it was 4% more likely to use an empowerment frame, especially in the Northeast (6%). This is a compelling finding because it speaks to Republican women’s propensity to claim or use feminist rhetoric for otherwise conservative ends—disturbing that liberal monopolization on what empowering women looks like. Interestingly, women were not more likely to use the ignorance frame or protectionist subsets. One might suspect that women lawmakers would at least be more likely to use the ignorance subset as it is so closely related to the empowerment frame. However this might speak to a larger issue of men’s knowledge claims, which I discuss below. On the protectionism frame, bills where women were involved were 4% more likely to contain that frame, with the Republican variable showing significance at 5%.

Table 3: Relationship Between Women Lawmaker's Involvement and Frame Subset Use

	Model 1 Empowerment	dy/dx	Model 2 Ignorance	dy/dx	Model 3 Protectionism	dy/dx
Woman Involved	.345 (.155)**	.080 (.036)	.282 (.233)		.259 (.153)*	.063 (.037)
Republican	-.248 (.195)		.093 (.284)		.329 (.193)*	.079 (.046)
Northeast	.611 (.245)**	.143 (.056)	1.26 (.294)****	.135 (.031)	-.079 (.245)	
Midwest	.130 (.181)		-.308 (.299)		-.039 (.179)	
West	-.057 (.265)		.009 (.393)		.165 (.262)	
Year	-.037 (.058)		-.112 (.085)		.041 (.057)	
<u>Model Fit</u>						
Pearson χ^2 (df = 64)	96.06		86.94		75.17	
Prob > χ^2	.006		.029		.160	
Pseudo R ²	.019		.051		.007	

N= 773

*significant in a one-tailed test at the $p < .10$ level, **significant in a one-tailed test at the $p < .05$ level, ***significant in a two-tailed test at the $p < .01$ level, **** significant at the $p < .001$ level

South and Democratic variables held as reference group. Standard errors in parentheses.

Broken down into sponsors and co-sponsors, we see a more nuanced pattern emerge among women primary sponsors where the fetal personhood frame was 4% more likely to be used in bills. The ignorance subset was also 2% more likely to be used in bills with women primary sponsors. The protectionism subset was marginally more likely to appear in bills where there was a woman primary sponsor, when conditioned by party; Republicans driving that by 5%. And the empowerment and ignorance subsets are still more likely to appear in the Northeast. (See Tables 4-7). However, no other patterns were evident when analyzing sponsorship.

Table 4: Relationship Between Women Primary Sponsors and Frame Use

	Pro-Woman	Fetal Personhood	Marginal Effects (dy/dx)
Woman Sponsor	.230 (.171)	.594 (.157)***	.138 (.035)
Republican	-.318 (.221)	-.139 (.197)	
Northeast	.094 (.273)	-.125 (.251)	
Midwest	.136 (.193)	-.053 (.180)	
West	-.134 (.268)	-.139 (.264)	
Year	.039 (.062)	-.027 (.058)	

Model Fit

Pearson χ^2 (63)	69.92	62.64
Prob > χ^2	.257	.489
Pseudo R ²	.007	.016

N= 773

*significant in a one-tailed test at the $p < .10$ level, **significant in a one-tailed test at the $p < .05$ level, ***significant in a two-tailed test at the $p < .01$ level, **** significant at the $p < .001$ level

South and Democratic variables held as reference group. Standard errors in parentheses.

Table 5: Relationship Between Women Co-Sponsors and Frame Use

	Pro-Woman	Fetal Personhood
Woman Co-sponsor	.169 (.238)	-.213 (.221)
Republican	-.332 (.220)	-.197 (.194)
Northeast	.171 (.267)	.062 (.243)
Midwest	.157 (.192)	.063 (.178)
West	-.095 (.266)	-.039 (.261)
Year	.036 (.062)	-.028 (.058)

Model Fit

Pearson χ^2 (58)	69.62	62.50
Prob > χ^2	.141	.319
Pseudo R ²	.006	.002

N= 773

*significant in a one-tailed test at the $p < .10$ level, **significant in a one-tailed test at the $p < .05$ level, ***significant in a two-tailed test at the $p < .01$ level, **** significant at the $p < .001$ level

South and Democratic variables held as reference group. Standard errors in parentheses.

Table 6: Relationship Between Women Primary Sponsors
and Frame Subset Use

	Model 1 Empowerment	dy/dx	Model 2 Ignorance	dy/dx	Model 3 Protectionism	dy/dx
Woman Sponsor	.178 (.157)		.416 (.229)*	.044 (.024)	.199 (.157)	
Republican	-.274 (.194)		.094 (.284)		.315 (.193)*	.076 (.046)
Northeast	.653 (.246)**	.153 (.057)	1.22 (.296)****	.129 (.031)	-.067 (.246)	
Midwest	.187 (.178)		-.308 (.297)		-.007 (.176)	
West	-.031 (.264)		-.015 (.394)		.174 (.262)	
Year	-.034 (.058)		-.107 (.085)		.044 (.057)	
<u>Model Fit</u>						
Pearson χ^2 (df = 63)	97.61		70.14		82.11	
Prob > χ^2	.003		.251		.053	
Pseudo R ²	.016		.054		.006	

N= 773

*significant in a one-tailed test at the $p < .10$ level, **significant in a one-tailed test at the $p < .05$ level, ***significant in a two-tailed test at the $p < .01$ level, **** significant at the $p < .001$ level

South and Democratic variables held as reference group. Standard errors in parentheses.

Table 7: Relationship Between Women Co-sponsors and Frame Subset Use

	Model 1 Empowerment	dy/dx	Model 2 Ignorance	dy/dx	Model 3 Protectionism
Woman Co-sponsor	.330 (.213)		-.303 (.359)		.134 (.216)
Republican	-.278 (.193)		.051 (.283)		.301 (.192)
Northeast	.719 (.241)***	.168 (.055)	1.34 (.287)****	.144 (.030)	.000 (.241)
Midwest	.186 (.178)		-.209 (.294)		.014 (.176)
West	-.001 (.263)		.051 (.392)		.207 (.260)
Year	-.039 (.058)		-.108 (.086)		.040 (.057)
<u>Model Fit</u>					
Pearson χ^2 (df = 58)	72.88		70.59		74.72
Prob > χ^2	.090		.124		.069
Pseudo R ²	.017		.049		.004

N= 773

*significant in a one-tailed test at the $p < .10$ level, **significant in a one-tailed test at the $p < .05$ level, ***significant in a two-tailed test at the $p < .01$ level, **** significant at the $p < .001$ level

South and Democratic variables held as reference group. Standard errors in parentheses.

I also tested for the partisanship of women lawmakers specifically. I used a dummy variable to select out all of the Republican women and Democratic women who introduced antiabortion bills in my dataset. Logit tests indicated that Republican women were 3% more likely to use both the pro-woman frame and the fetal personhood frame. This result may indicate that Republican women are driving the “love them both” approach. This could also indicate that they are shifting their frame strategically. Republican women were also more likely to use the empowerment and protectionism subsets by 3% and 4% respectively

Table 8: Relationship Between Republican Women Lawmakers and Frame Use

	Pro-Woman	dy/dx	Fetal Personhood	dy/dx
Republican Women	.421 (.162)***	.088 (.033)	.494 (.150)***	.115 (.034)
Northeast	.238 (.263)		.063 (.240)	
Midwest	.182 (.186)		.021 (.173)	
West	-.118 (.266)		-.117 (.260)	
Year	.015 (.060)		-.038 (.057)	
<u>Model Fit</u>				
Pearson χ^2 (34)	26.09		42.93	
Prob > χ^2	.823		.140	
Pseudo R ²	.010		.011	

N= 794

*significant in a one-tailed test at the $p < .10$ level, **significant in a one-tailed test at the $p < .05$ level, ***significant in a two-tailed test at the $p < .01$ level, **** significant at the $p < .001$ level

South and Democratic variables held as reference group. Standard errors in parentheses.

Table 9: Relationship Between Republican Women Lawmakers and Frame Subset Use

	Model 1 Empowerment	dy/dx	Model 2 Ignorance	dy/dx	Model 3 Protectionism	dy/dx
Republican Woman	.445 (.150)***	.103 (.034)	.268 (.219)		.445 (.149)***	.106 (.035)
Northeast	.752 (.237)***	.174 (.054)	1.31 (.279)****	.141 (.295)	-.107 (.237)	
Midwest	.146 (.174)		-.188 (.280)		-.027 (.171)	
West	-.124 (.263)		-.002 (.392)		.217 (.260)	
Year	-.050 (.057)		-.108 (.084)		.041 (.056)	
<u>Model Fit</u>						
Pearson χ^2 (df = 34)	63.70		39.00		48.67	
Prob > χ^2	.002		.255		.049	
Pseudo R ²	.021		.047		.010	

N= 794

*significant in a one-tailed test at the $p < .10$ level, **significant in a one-tailed test at the $p < .05$ level, ***significant in a two-tailed test at the $p < .01$ level, **** significant at the $p < .001$ level

South and Democratic variables held as reference group. Standard errors in parentheses.

Democratic women lawmakers, on the other hand showed quite different results. The pro-woman frame was no more likely to appear in their bills, however, the protectionism subset was significant in the opposite direction. In other words, the protectionism subset was almost 11% less likely to be used by bills introduced by Democratic women lawmakers. (See Table 10). This comports theoretically, as the protectionism subset—as described in Chapter 2—has deep roots in a history of gender exclusionary policies. It is understandable that even if Democratic women lawmakers are not using the pro-woman frame or its subsets more than any other group of lawmakers, they are using the protectionism subset less often, and therefore rejecting the norms and historical context of that subset.

Table 10: Relationship Between Democratic Women Lawmakers and Frame Subset Use

	Model 1 Empowerment	dy/dx	Model 2 Ignorance	dy/dx	Model 3 Protectionism	dy/dx
Democratic Woman	.167 (.390)		-.305 (.509)		-1.70 (.455)****	-.404 (.105)
Northeast	.771 (.245)**	.180 (.056)	1.39 (.291)****	.151 (.031)	.248 (.255)	
Midwest	.221 (.171)		-.137 (.277)		.064 (.170)	
West	-.038 (.260)		.041 (.390)		.265 (.258)	
Year	-.039 (.057)		-.106 (.084)		.037 (.056)	
<u>Model Fit</u>						
Pearson χ^2 (df = 26)	46.71		22.28		25.11	
Prob > χ^2	.008		.674		.513	
Pseudo R ²	.013		.046		.012	

N= 794

*significant in a one-tailed test at the $p < .10$ level, **significant in a one-tailed test at the $p < .05$ level, ***significant in a two-tailed test at the $p < .01$ level, **** significant at the $p < .001$ level

South and Democratic variables held as reference group. Standard errors in parentheses.

Overall, there were noteworthy differences in the way Republican women and Democratic women used the pro-woman frame. The strength of significance in the likelihood of Republican women using the frame lies in the empowerment and protectionism subsets. This finding could point to the fact that Republican women might feel that they have to more strongly justify and frame their regulations, and go out of their way to demonstrate how they are representing their women constituents and advocating for their interests. The empowerment subset's highly significant finding among Republican women also points to scholarship regarding how conservative women lawmakers seek to coopt, or perhaps redefine feminism and women's empowerment. Also, as scholars have shown, Republican women are in a precarious position—they are subsumed into a party that by and large struggles with gender. And at this time period, especially, has dealt with a very particular backlash about their positions on reproductive health issues. All of this might lead to a reframing of abortion regulations, and a strict adherence to those more women-friendly frames.

The use of the fetal personhood frame takes on a different dimension when looking through a gendered analytical framework. Women lawmakers using this frame can call to their experiences with pregnancy and motherhood, where applicable, to make claims about their knowledge base. This situated knowledge can be a powerful tool for framing and controlling discourse, as well as claiming expertise in an issue area. As indicated in Tables 2 and 4, in a logistical regression with the presence of a fetal personhood frame as a dichotomous variable, we see that when women lawmakers were involved in the introduction of the bill, it was more likely to contain a fetal personhood frame. Specifically, the power behind that significant value comes directly from bills in

which women were the primary sponsors, and Republican women. For insight into this activity, I turn to Melissa Deckman's 2016 book *Tea Party Women*.³² Deckman investigates, among other things, how the Tea Party Republican women in Congress use rhetoric to support and justify their policy standpoints. Most importantly to this project, she points to how they redefine and call upon motherhood in certain policy issues. This sense of strong motherhood is a historically based argument that finds value in traditional and heavily entrenched gender roles. "Republican motherhood" was first defined by historian Linda Kerber (1976). This describes, "[t]he practice of linking women's rights to their mothering capacity, and valuing women as ancillary creators and protectors of future full (male) citizens," (Rose and Hatfield 2008, 9). Painting motherhood as the most patriotic and noble of roles for women, reproduction was cast as a large part of women's duty to their country. And motherhood was in turn supported through a variety of federal and state welfare programs, validating the importance. For women lawmakers who subscribe to republican motherhood—at least as an ideology—motherhood is a higher calling. As described in Chapter 2, though motherhood is not a partisan issue, conservative women have fully embraced traditional notions of motherhood as pro-woman, and pro-family. This call upon motherhood as a way to both empower women and recognize the fetal personhood frame is used as a very specific rhetorical tactic deserves further investigation.

Lastly, a brief look into the legislative advancement of the bill indicates that there is significant movement forward in those bills, especially when women are involved.

³² Full title: *Tea Party Women: Mama Grizzlies, Grassroots Leaders, and the Changing Face of the American Right*.

Table 11: Relationship between Bills Passed Successfully and Frame

	Pro-Woman	dy/dx	Fetal Personhood	dy/dx
Frame	.264 (.215)		.062 (.193)	
Woman Involved	.432 (.197)**	.063 (.029)	.438 (.198)**	.064 (.029)
Republican	-.264 (.245)		-.281 (.245)	
Northeast	-1.13 (.426)***	-1.66 (.062)	-1.14 (.427)	-.167 (.062)
Midwest	.271 (.218)		.218 (.218)	
West	.471 (.303)		.461 (.303)	
Year	.169 (.074)**	.025 (.011)	.172 (.074)**	.025 (.011)
<u>Model Fit</u>				
Pearson χ^2 (df = 120, 124)	134.96		149.29	
Prob > χ^2	.166		.061	
Pseudo R ²	.037		.035	

N= 773

*significant in a one-tailed test at the $p < .10$ level, **significant in a one-tailed test at the $p < .05$ level, ***significant in a two-tailed test at the $p < .01$ level, **** significant at the $p < .001$ level

South and Democratic variables held as reference group. Standard errors in parentheses.

Table 12: Relationship between Bills that Advanced Beyond Committee and Frame

	Pro-Woman	dy/dx	Fetal Personhood	dy/dx
Frame	.365 (.205)*	.059 (.033)	.227 (.181)	
Woman Involved	.421 (.186)**	.069 (.030)	.415 (.187)**	.068 (.030)
Republican	-.307 (.232)		-.329 (.232)	
Northeast	-1.38 (.423)****	-.226 (.068)	-1.39 (.424)****	-.228 (.069)
Midwest	.224 (.205)		.229 (.205)	
West	.313 (.295)		.306 (.296)	
Year	.163 (.070)**	.027 (.011)	.169 (.070)**	.028 (.011)
<u>Model Fit</u>				
Pearson χ^2 (df = 120, 124)	135.86		148.16	
Prob > χ^2	.153		.069	
Pseudo R ²	.044		.041	

N= 773

*significant in a one-tailed test at the $p < .10$ level, **significant in a one-tailed test at the $p < .05$ level, ***significant in a two-tailed test at the $p < .01$ level, **** significant at the $p < .001$ level

South and Democratic variables held as reference group. Standard errors in parentheses.

In both getting bills passed and moving them out of committee, when women were involved, there was 3% more successful activity on the bills. This is true in the cases of bills that used the pro-woman as well as the fetal personhood frames. The common denominator here was the women's presence on the bills. Again we see the bills becoming more likely to advance through the legislature as the years increase. And as expected based on the results in Chapter 3, bills that use the pro-woman frame overall saw more success in advancing beyond committee (3%), and bills introduced in the Northeast using any frame are 7% less likely to be successful or advance beyond committee.

What About the Men?

Of course, when scholars discuss gender, it is important to discuss masculinity: how male legislators' behavior and rhetoric institutionalizes and buttresses gender roles, paternalism, and false dichotomies. Male lawmakers and voters should be studied—not assumed as a neutral base to which women are compared—but as individuals and groups that deploy and engage in gendered behavior themselves. As such, it was necessary to understand the frame usage in regulatory abortion politics by men. Grounded in historical scholarship as laid out in Chapter 2, male lawmakers were likely to sponsor legislation that is imbued with prototypical gender roles, specifically when seeking to protect women.

Table 13: Relationship between Male Lawmakers and Frame Use

	Pro-Woman	dy/dx	Fetal Personhood	dy/dx
Men Only	-.299 (.165)*	-.622 (.034)	-.471 (.156)***	-.109 (.036)
Republican	-.302 (.221)		-.134 (.196)	
Northeast	.078 (.272)		-.071 (.249)	
Midwest	.098 (.195)		-.074 (.182)	
West	-.144 (.268)		-.115 (.263)	
Year	.036 (.062)		-.034 (.058)	
<u>Model Fit</u>				
Pearson χ^2 (df = 64)	67.12		72.08	
Prob > χ^2	.371		.228	
Pseudo R ²	.009		.011	

N= 773

*significant in a one-tailed test at the $p < .10$ level, **significant in a one-tailed test at the $p < .05$ level, ***significant in a two-tailed test at the $p < .01$ level, **** significant at the $p < .001$ level

South and Democratic variables held as reference group. Standard errors in parentheses.

Table 14: Relationship between Male Lawmakers Frame Subset Use

	Model 1		Model 2		Model 3	
	Empowerment	dy/dx	Ignorance	dy/dx	Protectionism	dy/dx
Men Only	-.345 (.155)*	.080 (.036)	-.282 (.233)		-2.59 (.153)*	-.063 (.037)
Republican	-.248 (.195)		.093 (.284)		.329 (.193)*	.079 (.046)
Northeast	.611 (.245)**	.142 (.056)	1.26 (.294)****	.135 (.031)	-.079 (.245)	
Midwest	.130 (.181)		-.308 (.299)		-.039 (.179)	
West	-.057 (.265)		.009 (.393)		.166 (.262)	
Year	-.037 (.058)		-.112 (.085)		.041 (.057)	
<u>Model Fit</u>						
Pearson χ^2 (df = 64)	96.06		86.94		75.17	
Prob > χ^2	.006		.029		.160	
Pseudo R ²	.019		.051		.006	

N= 773

*significant in a one-tailed test at the $p < .10$ level, **significant in a one-tailed test at the $p < .05$ level, ***significant in a two-tailed test at the $p < .01$ level, **** significant at the $p < .001$ level

South and Democratic variables held as reference group. Standard errors in parentheses.

The logistic regression on men-only sponsored bills yielded very interesting, perhaps surprising, results. On the bills in which only men were involved in the introduction and sponsorship, these bills were 3% less likely to include the pro-woman frame. When broken down into frame subsets, the empowerment and protectionism subset were both 4% less likely to appear in men-only bills. Bills sponsored by men were also 4% less likely to use the fetal personhood frame. This finding was extraordinarily compelling, considering the substantial historical and theoretical grounding for men introducing protectionist policies, as explained in Chapter 1, as well as the fact that male lawmakers have led the antiabortion fetal rights campaign in politics for decades. However, the ubiquitous use of the empowerment frame and feminist, or rights-based language used by Republican women, but not by men points to a greater shift to reorganize and coopt prototypically liberal feminist policy positions among conservative women lawmakers, but not their male colleagues. Wherein the domain of reproductive empowerment is typically held by liberal, Democratic policymakers and advocates, the use of empowerment frames by Republicans women regulating reproductive rights could represent something of a power grab. Additionally, as noted earlier, Republicans, specifically Republican men, during the time of this study were suffering spectacularly bad press across the country for being antagonistic towards women. The “War on Women” might have spurred at least the Republican women lawmakers who were concerned with their electoral gender gaps and media image to reframe their otherwise restrictive policy priorities and standpoints. A more detailed analysis of male legislators could help understand any other patterns; for example, partisanship among male

lawmakers who introduce antiabortion policies. A cursory glance indicates that there is something worth looking at with the Republican variable in the protectionism subset.

The results of the men-only sponsored bills were compelling and further research is certainly in order. Masculinity studies are profoundly interesting and help us, as scholars understand how men perform gender. Also, a more intense focus on men might shed some light on how they react to gendered backlash, and how they are reaching out to their constituents in claiming to represent their best interests.

Antiabortion Democrats

Another group that deserves particular attention are Democrats. Turning towards partisanship, as seen in the previous chapter, there were significant variance between Republicans and Democrats overall, and among women lawmakers as seen above. However, it is important to delve into some of these differences to understand why this pattern exists and what that might mean for antiabortion Democrats.

In researching states, it is always important to remember that states each have their own particular political culture. As such, when state specific outliers present themselves, it invariably begs further investigation. The Rhode Island legislature is of particular interest. One of the most compelling outliers in the data collected for this project was the women lawmakers in Rhode Island – specifically, the Democratic women lawmakers. Sponsoring 19 of the 22 bills introduced in Rhode Island, a handful of Democratic women lawmakers in Rhode Island have been particularly active and outspoken on their desire to regulate abortion. Representatives Mary Ellen Goodwin, Karen MacBeth, Patricia Serpa, and Deborah Fellela among several others and male

colleagues have introduced a variety of abortion regulations including ultrasound provisions (5), sex-selection bans (4), anti-coercion provisions (3), informed consent mandates (2), late term bans (2), insurance and funding regulations (2), and a conscience clause (1).

To speak to this phenomenon, it is necessary to understand the culture of the Rhode Island state legislature. Though we know that antiabortion Democrats exist, they are largely outnumbered by pro-choice Democrats on a national scale. Additionally, not only has the Democratic national platform historically included a positive affirmation of abortion rights since legalization of abortion, research has shown that on the state level, Democratic women are key in preventing the passage of antiabortion legislation, especially when they are seated on committees, and when the state has few women in elected office. So how does a state like Rhode Island, by all means, a blue state, have such a high occurrence of regulatory abortion bill introduction? The four women mentioned above, are among the most active members to introduce regulatory abortion bills, and account for the high numbers in this state. These Democratic women see it as a personal mission—and they go about their introductions in somewhat of a political bubble, one where because such bills are likely to die in committee, they never have to answer to their antiabortion views.

Scouring local papers concerning the sponsorship of these bills was an interesting exercise. Many of the articles I came across highlighted the ways in which Rhode Island was seeking to protect the right to abortion. However, once I zeroed in on these particular bills, a different story emerged—one that would probably not have garnered any press aside from the fact that an antiabortion bill had finally made it to the hearing stage.

Rhode Island Representative Karen MacBeth sponsored several abortion bills during this time, including four ultrasound bills, each in different years, a coercion bill, two informed consent bills, and one bill banning sex-selective abortion. When questioned by a local news outlet in 2012 why she would be introducing the same ultrasound bill for another year, Rep. MacBeth stated:

“It is a scary time for a woman...there is a lot of emotion going on. The woman may not know to ask, she may be afraid to ask. That’s all this bill is doing. It is saying to the woman, if you want to look at this, you can look at it, if you don’t, you don’t have to look at it and we will tell you what you are looking at... This has ramifications for a woman that are life-long.”³³

In this statement, Rep. MacBeth echoed the concern for women’s emotional and psychological state when enduring an unplanned pregnancy. She uses words like scary and afraid to signal that the state can step in to alleviate fears by providing options. And here you can see that the ultrasound bill that she is proposing doesn’t exactly mandate an ultrasound, but gives women the option to have one, but requires doctors to explain what is going on in the ultrasound. Again, this is pointing to women’s ignorance and the state’s providing of what it deems to be the “right” information. Her use of such language calls out the emotion and empathy for her constituents.

Democrats in other states, such as Minnesota, have also been active supporting and sponsoring abortion regulations. From the Democratic-Farm-Labor (DFL) Party, Minnesota representative Patti Fritz has sponsored three bills during the time period this database captures. Two of those bills, HF1059 (2009) and HF 901 (2013) were to prohibit state-sponsored healthcare programs to fund abortion. For HF 1059, the principle sponsor was DFL colleague Mary Ellen Otremba, who has since retired and passed away. In

³³ <http://www.woonsocketcall.com/node/4945>

2009, Rep. Fritz also sponsored HF 1058, which prohibited saline amniocentesis abortion, a procedure that injects saline solution into the uterus in order to induce abortion. Interestingly, these two women lawmakers break with their DFL party generally on sponsoring these bills, as the DFL party platform recognizes privacy in reproductive decision-making. However, they are not alone in their antiabortion standpoint; several other DFL members—male colleagues—also co-sponsored these bills. Lawmakers overall were quite active on funding prohibitions DFL male lawmakers were also active in being primary sponsors on three abortion regulatory bills, as well as being co-sponsors on many introduced by Republican women. Representatives Fritz and Otremba were also often co-sponsors on various regulatory measures. Like the Democratic women in Rhode Island, these representatives could simply be antiabortion Democrats, insulated by safe districts and relatively non-controversial bills that were doomed to fail anyway.

Antiabortion Democratic women tend to stand out as outliers in their parties. However, due to the variations in state culture, personal experience, religion or ideology, they do exist. It is compelling to follow their activity and how they are presenting their support for regulatory abortion measures, especially as representatives of a party and constituents who nationally, support abortion rights.

Race and Reproductive Rights – Intersectional Look at Abortion Regulations

As party, ideology, and gender intersect in interesting ways as evidenced in the Rhode Island legislature, scholars of women and politics urge that other aspects of identity and experience be pursued as a method of analysis. Intersectionality refers to the ways in which identity effects power and politics; or, as defined by feminist scholar

Wendy Smooth, intersectionality is “the assertion that social identity categories such as race, gender, class, sexuality, and ability are interconnected and operate simultaneously to produce experiences of both privilege and marginalization,” (Smooth 2013, 11). The Combahee River Collective put forth some of the first conceptualizations of intersectionality as both a theory and a call to action. It was applied further in Kimberlé Crenshaw’s groundbreaking legal theory scholarship to outline how Black women were refused grounds to sue based on race—as Black men were not discriminated against—nor gender—as white women were not discriminated against. This analysis evidenced that as Black women were both Black and women, their multiplicative identities subjected them to a different set of rules, standards, regulation, and relationship to power (Crenshaw 1989). As intersectional analysis took off in academic circles for women of color, scholars such as Dorothy Roberts, and Gwendolyn Mink, explored the historical, and current application of reproductive rights in the lives of Black women. The documentation of this work is staggering; women of color have had a troubling and at many times violent relationship with doctors, lawmakers, and those who involved themselves with their reproductive capabilities. Black women in particular, and Black women’s bodies have been subjected to some of the most invasive and inhumane of procedures related to reproduction. As such, when Black women lawmakers seek to represent both as Black women, and for Black women, it is important to take notice.

The Democratic women of color in Louisiana provide a compelling intersectional case study, detailed below—their case is quite exceptional. As Black women in Congress largely represent some of the more liberal attitudes, and support pro-choice legislation, this state case of antiabortion Black Democratic women is interesting (Swers 1998). In

many ways, their antiabortion/pro-regulation standpoints highlight a desire to properly represent the needs of their Black women constituents; however, in light of the national political context of abortion, the regulations would come under significant media scrutiny for the potential harm in the outcome of these regulations. The rhetoric these women employ characterizes a different dimension of the pro-woman frame; ones that take into account the history of issues of reproduction and the situatedness of women of color.

History of Racialized Reproductive Intervention

In *Killing the Black Body*, Dorothy Roberts accounts the harrowing history of Black women and reproduction. In practically every way, violence has been done to Black women's bodies via intervention upon their reproductive capabilities. During slavery, reproduction among Black women slaves was seen as a way to expand the workforce of a given plantation. Children were monetized, and often times sold away from their families. Pregnant women were only protected inasmuch as their pregnancy itself was seen as an investment. Even following emancipation and other rights-granting laws, such as the right to vote, and progress during the civil rights era, the early birth control movement had an uneasy alliance with the eugenics movement, and many arguments for birth control included race-based overtones. However, Black women had been long taking steps to control their own childbearing and participating in birth control methods (Roberts, 1997). Even more nefariously, sterilization had been practiced on Black women, gaining national attention in the 1970s, where it became part of a widespread practice of medical students to perform hysterectomies on poor Black women. In the early 1990s, Norplant, an injectable birth control, was marketed heavily to

Black women on welfare by being covered by Medicaid, and some states even considering bills that would make it mandatory for welfare recipients. The issue here beyond coercive measures was the physical issues with Norplant—it was known to have right risks of side effects including excessive bleeding, among other things. Roberts points to inability of women to control their use of Norplant, relying on medical assistance to inject and remove the implants (Roberts, 1997).

This brief timeline of violent and coercive practices by the medical community supported largely by policymakers is by no means the entire story of the issues of race and reproduction. This brief history is merely a snapshot of how Black women have been dehumanized, coerced, and experimented on with regards to their reproduction. Current programs such as family cap programs as part of welfare have a way of being passively coercive towards women on welfare, many of who are women of color (Smith, 2007). Incarcerated women have also been known to be shackled while giving birth—a practice that may not be particularly racialized, however, certainly effects women of color as they are disproportionately incarcerated (Paltrow and Flavin, 2013). These interventions point to a very real and particular issue that effect women of color—the lack of control, the violence, and the loss of dignity over reproductive matters. As a Black woman policymaker, your standpoint and attention to the history of women of color and reproduction might be squarely pointed towards the health and safety of the women of color in your district. It may even lead you to make statements such as referring to abortion as Black “genocide” as one Louisiana legislator did.

Case Study: Race in Louisiana

Though not as prominent as the Democratic women in Rhode Island, Louisiana also had two Democratic women introducing abortion laws more than their Republican counterparts—Senator Sharon Weston Broome, and Assemblywoman Katrina Jackson. Of the five women-sponsored bills in Louisiana, three were by Democratic women.³⁴ Though the number was slight in Louisiana, further reflection on the dynamics of race and reproduction proved that this state would be an interesting and important case study. This hunch was further vindicated in researching beyond the years of my data collection. Senator Sharon Weston Broome had been active on ultrasound requirements in my database, her colleague Assemblywoman Katrina Jackson had just two years later, introduced a measure that took the media by storm. Both emerge as Black women Democrats who are known to be antiabortion advocates, will not back down from challenges to their policy proposals.

Senator Broome's ultrasound laws were introduced in 2010 (SB 528)³⁵ and 2012 (SB 708) and were both successfully passed and signed into law. In the 2010 law, ultrasounds were to be required two hours prior to abortion. This also included language about allowing the woman to see the ultrasound screen, hear details about the fetus, and be provided with a printout in a sealed envelope. During committee hearing testimony, Broome noted that "'This is a bill that empowers women,' ...adding that at least 15 other states have a similar requirement."³⁶ In the committee hearing, Broome also called upon

34 One more Democratic woman was active as well, Assemblywoman Regina Barrow, but never as a primary sponsor. Additionally, these three Democratic women were active as co-sponsors on 4 other bills out of the 13 total bills in Louisiana, making Democratic women active in some way on a total of 7 of the 13 bills.

35 Drafted with aid from the Bioethics Defense Fund.

36 http://www.nola.com/politics/index.ssf/2010/06/ultrasounds_to_be_required_for.html

legislation that she had introduced years prior when she was a House member, which was the “Woman’s Right to Know” Act, an act which she noted “...allowed women to make an informed decision before having an abortion.” On the particular bill SB 528, Sen. Broome’s statement before the Health and Welfare Committee indicated the legislative intent: that the woman “...should be able to have access to viewing an ultrasound,” and regarding the printout of the ultrasound scan, the woman “...has the choice whether to accept the printout or discard the printout.”³⁷ When asked about the victims of rape or incest not being excluded from this bill, Sen. Broome responded that the child is also a victim and both the woman and the unborn child deserve “unconditional support.” This last statement is again, a call to the “love them both” approach that links women and their fetuses in a way that has not been seen in US abortion rhetoric since before legalization.

In the 2012 law, SB 708, the ultrasound mandate was upgraded to 24 hours prior to the abortion, and the opportunity to hear a fetal heart tone was added. In news and press releases, Sen. Broome clarified her intent on introducing SB 708 stating that, “So this bill today, before you, adds the additional feature of giving the woman the opportunity to heartbeat of her unborn child. I stress that because there seems to be a lot of distortions around giving someone the opportunity,”³⁸ The rights-based empowerment language around giving women the “opportunity” is palpable in her statement on this bill as well as her testimony for SB 528. Indeed, Sen. Broome has stood for women, their needs, and their protection in her long political career. To her, proposing this bill would comport with her representation of her female constituents.

³⁷ Health and Welfare Committee Testimony on SB 528, 4/28/10, transcribed by self

³⁸ Abortion bills advance through La. Legislature, AP, 5/16/12 AP Alert - LA 19:43:16

In a more direct linking of gender, race, and representation, it is necessary to look at Assemblywoman Katrina Jackson's statements around HB 388. This is a TRAP law like any other: it calls for physicians to have admitting privileges at a hospital located 30 miles from the abortion clinic, and stipulates that only (physically present) physicians can prescribe abortion medication. First filed in late February 2014, this measure was introduced in a political environment that had just caught up to the tactic of TRAP laws. Just that past summer, Texas lawmaker Wendy Davis had famously conducted a 13-hour filibuster on a similar measure, garnering significant public attention. Now in Louisiana, as TRAP policies diffused throughout the states, a Democratic antiabortion woman of color elected in 2011, took the initiative to introduce a TRAP law in Louisiana—one that would expand on others introduced in the previous four years. Louisiana's first TRAP law was in 2010 (HB 1370) and included regulations on clinic licensure. Following and expanding on that, in 2012 (SB 330) and 2013 (SB 90), two laws were passed which regulated the physician performing the abortion requiring specific licensure and that they would need to be physically present for medication abortion. For the HB 1370 law, Sen. Broome was a co-sponsor. However, both Broome and Jackson were co-sponsors on the SB 330 and SB90 as well. But it was really HB 388, the 2014 Jackson-sponsored TRAP law, that gained significant attention – perhaps because of the political moment, perhaps because a woman was introducing it whereas before it was her male colleagues, and perhaps because Rep. Jackson's outspoken and adamant interest in representing the needs of and protection of women of color, as Chair of the Louisiana Legislative Black Caucus. Additionally, the attention could have been due to the impact on the clinics themselves. When this law was introduced, there were four operating abortion clinics in Louisiana;

however, after nearly two years of being challenged in the courts, following an appeals court's stay of a district court injunction on the law, two of the four clinics had already shut down.

Representative Jackson's HB 388 suffered from misinformation around the impact of the bill and its details. However, during a heated and contentious hearing in front of the House Committee on Health and Welfare on March 19, 2014, Rep. Jackson echoed a claim heard within antiabortion advocacy groups specifically addressing race and reproduction: that the number one cause of death among the Black community is abortion. Rep. Jackson stated,

I heard it thrown around... that this mostly protects minority women, but I want to address something and I'm not sure if you are aware that the number one genocide in the African American community while we're becoming a minority of minorities is because most of our babies are dying in the womb from abortion... more African Americans die from abortion than any other illness. I don't want people advocating erroneously for African American women... get all the facts, because I'm an African American woman... if we protect once facet of African Americans, we protect all of them.³⁹

Labeling abortion as “genocide,” Rep. Jackson is forcefully using a race and gendered framing of abortion as being unambiguously immoral for Black women and the Black community which she represents generally. Her approach is one of a “love them both” frame, where she sees the protection of Black women as one in the same with protecting Black fetuses, and took specific issue with the panel of women—who were of mixed races—to advocate on behalf of Black women.

This bill then moved on to the Senate Health and Welfare Committee, where Rep. Jackson made interesting and noteworthy points during her testimony on May 8, 2014.

³⁹ From the 3/19/14 Health and Welfare committee hearing, while Jackson was questioning the opposition to her own bill HB 388. Link: http://house.louisiana.gov/H_Video/VideoArchivePlayer.aspx?v=house/2014/Mar_2014/0319_14_HW

During her opening statements in support of her bill, she remarks that she is “overjoyed that she has the opportunity to protect the lives of women,” and that the bill simply says that abortion should be done in a “...safe environment that offers women the optimal protection and care of their bodies.” She further notes that though she is fervently pro-life, she acknowledges the Supreme Court’s decision in *Roe v. Wade* and seeks to “legislate in the realm of that ruling.” In her view, she is directly servicing her constituents by making “sure that the safety of women is intact.”

For this bill, Rep. Jackson and witnesses relied heavily on framing abortion providers as providing a lower standard of care, or simply not caring at all about the patients. Several witnesses pointed to Dr. Kermit Gosnell, mentioned in earlier chapters, as an example of an abortion doctor who was particularly brutal towards women. Interestingly, given the bifurcation of abortion from other medical procedures,⁴⁰ it was curious to hear the bill advocates talk about the relationship between abortion providers and hospitals. At one point in the testimony, a witness noted that admitting privileges were “doing women a favor” because the care that one could get at a hospital is superior to any other. However, later another witness testified that women would go to an emergency room if experiencing adverse effects of abortion, where she would not get the best care because the staff there does not know her history. Additionally, another complicated argument is that though abortion providers are largely framed as not having a relationship of knowledge of the woman, or perhaps even being careless and hasty with a delicate procedure, the witnesses were arguing *for* an abortion provider’s ability to admit the woman and be with her in the emergency room because they are the only ones

⁴⁰ See Rose (2008).

who would have an intimate knowledge of her recent medical history. These, perhaps, paradoxical arguments highlight the effects of the historical bifurcation of reproductive healthcare from other types of healthcare. Kermit Gosnell is a particularly disturbing figure for women of color, as the women he directly harmed were largely immigrant women of color. Bringing up his name is a way to highlight the extremes of unregulated abortion practices. However, shadowy figures such as Gosnell would be more frequently occurring if abortion were made illegal or inaccessible.

The representational angle these two women lawmakers from Louisiana—Broome, and Jackson—are taking is coming from a historical perspective. Where women of color have not historically had equality or parity in representation, where women of color have a history of violence against their bodies especially when it comes to their reproductive bodies, where women of color have been systematically and historically stigmatized and demonized for their very reproduction, the tactics and arguments employed by these Black women Democrats makes sense. Additionally, their other positions on women's issues are consistent with being advocates and representatives. They are all quite strong on policy issues that would provide protections for domestic violence survivors, a social safety net, and education. But their use of this standpoint in the abortion debate is worth noting, and worth further study. Could this be a trend, or do they stand alone as an anomaly? What other factors lead to their stance on abortion? Does religion play a factor? Fortunately for the future of scholars such as myself who study abortion, these questions are answerable and would significantly add to the understanding of the evolution of abortion framing.

Discussion and Conclusions

The results from the various analyses in this chapter were telling: though men introduced more bills overall, women lawmakers were disproportionately active in introducing regulatory abortion bills, both as sponsors and co-sponsors. The bills that had women involved were also more successful in advancing through the state legislature. Bills with women involved were significantly more likely to use the pro-woman frame, though there was no difference broken down by sponsorship. The somewhat surprising nature of the frame usage came from the male lawmakers, who were less likely to use both the pro-woman and fetal personhood frames on the regulatory measures they introduced. As stated earlier, there could be particular reasons why the pro-woman frame was so present throughout the bills introduced by Republican women but not their male colleagues, including an increased awareness of their electoral gender voting gaps. The Republican women here might be typifying some kind of anticipatory representation—getting ahead of critiques levied by feminist scholars, activists, concerned citizens, and pundits (Mansbridge, 2003).

When viewed through a partisan lens, Republican women are using the empowerment and protectionist frames to justify their regulations. Democratic women, on the other hand, are using only the protectionist frame. This was surprising—one would expect that the feminist language used in the empowerment frame would be something that would be particularly attractive to Democratic women. However, when looking at the bill types, the data evidences that Democratic women are more actively introducing bills that are in and of themselves more likely to be protectionist bills, such as anti sex-selective abortions, and anti-coercion bills, whereas Republican women are more likely

to introduce informed consent bills, which heavily use rights-based empowerment language.

Democratic women proved to be an interesting case study—a select few Democratic women in Rhode Island were particularly active on introducing abortion regulations. Testifying in a committee hearing, one sponsor brought up her own experiences with abortion as informing her standpoint on abortion and applying that to her constituents. Additionally, and taking an intersectional approach to antiabortion Democratic women, the women lawmakers in Louisiana call upon Black women’s tenuous relationship to doctors and historical treatment with regards to reproduction. The hearings, direct testimony, and questioning on various bills introduced by Sen. Broome and Rep. Jackson were quite telling—especially in the case of Rep. Jackson. Her direct confrontation of the representation of Black women and her concern for that community being a member of it herself was textbook substantive *and* descriptive representation in harmony. Given the complex history and even the current issues around reproductive rights for women of color, her standpoint is remarkable.

The strategy employed by the Democratic women in Rhode Island and Louisiana are extraordinarily important to understand the power behind their standpoints and representation of their constituents. They are using both personal experiences to connect directly to their policy positions, and those experiences are used to gain leverage as being uniquely situated to being the authority on this issue and on what is best for their constituents. An interesting further direction would be to interview these women to gain a deeper understanding of how they view their advocacy, what drives them to take certain policy standpoints, and how it comports with advocacy they do for women of color in

other realms outside of regulating abortion. This would tell a compelling story, and would truly ask us, as scholars of women in politics, to perhaps re-conceptualize which women are being represented and how when we discuss the representation of women.

Conclusion

As I conducted this study, abortion laws continued to shift and change. *Whole Woman's Health* was decided, as was a presidential election with enormous consequences for the ideological makeup of the US Supreme Court. People often ask me what the future holds for abortion rights in the US, and it seems as uncertain now as it has always been. However, having completed this study and created this extensive database, we can understand more about the complex and sometimes unstable world of abortion politics. Importantly, this study lays the groundwork for future studies that may have more implications for questions regarding women and politics, reproductive politics, and legislative behavior. Here I sum up the key findings, reflect on the future of the pro-woman frame, and make suggestions for further research. Lastly, I suggest what the theoretical implications of this research are for women's citizenship—a topic that has been at the heart of feminist scholarship for decades.

Takeaways

The pro-woman frame, as evidenced throughout this study, has historical roots in gender-based discriminatory policies. Grounded in assumed gender differences, norms about women's roles in society were entrenched and institutionalized by strategically framed laws and policies. By framing discriminatory policies as 'in women's best interests,' lawmakers were able to justify women's exclusion from full citizenship. Though the archaic labor laws, and segregation from other public activities such as serving on juries or in the military have been overturned, the same justifications are now being used to limit women's access to other fundamental rights. When applied to

abortion, the pro-woman frame allows lawmakers and antiabortion advocates to usurp the rhetorical claims space that has been enjoyed by pro-choice advocates for decades: that they are the ones primarily concerned with defending women's health and safety.

This study has shown that lawmakers significantly and actively use the pro-woman frame in regulatory abortion bills. The pro-woman frame was broken into three interrelated subsets—empowerment, ignorance, and protection—all of which use distinct rhetorical tactics and tropes to situate women, doctors, and the state in particular relationships that enable or justify regulatory laws. This is a significant addition to the literature around the pro-woman frame: few, if any scholars consider the subsets of empowerment and protection as part of a larger pro-woman frame, and the ignorance subset is an original frame. Of the three, the protectionist subset, which purports to protect women from harmful doctors and dangerous abortion procedures, is by far the most frequently used. As such, abortion regulations are a contemporary manifestation of old, and often discriminatory policies. Relying on antiquated claims about gendered behavior, gender roles, and gender norms, and using protectionist arguments further codifies gender difference in this area of law.

As seen in my quantitative analysis, this study evidenced little difference in terms of the use of the pro-woman frame across states and across political parties. Two exceptions were that legislators in the Northeast were more likely to use the empowerment and ignorance subsets. The lack of pattern suggests that the pro-woman frame is used widely by Republicans and Democrats alike, and in most regions as well.

When analyzing the gender variable, women lawmakers were disproportionately active in introducing regulatory abortion bills, both as sponsors and co-sponsors, and

their bills were more successful in terms of legislative advancement. In regards to partisanship, Republican women lead the way on the use of the pro-woman frame. Republican women also used the empowerment and protectionist frames to justify their regulations; however, Democratic women were using only the protectionist frame. As noted in Chapter 4, this was a surprising finding—the feminist language used in the empowerment frame seems like it would be more attractive to Democratic women, or at least politically useful. However, Democratic women turned out to be an all around interesting group in the case of regulatory abortion policy overall. The Democratic women of Louisiana and Rhode Island were particularly active in introducing abortion regulations. In Rhode Island, one of the Democratic women lawmakers told her own abortion story as to why regulations were so needed. The Democratic women lawmakers in Louisiana referenced a racialized medical history to highlight how Black women's relationships with doctors, especially with regards to reproduction, has been tenuous at best, violent at worst. The experiences of Senator Sharon Weston Broome and Representative Katrina Jackson brought an important intersectional analysis to this study. As a Black woman herself, Rep. Jackson's direct confrontation of the representation of Black women and her concern for that community was a perfect example of a case of both substantive *and* descriptive representation. The strategy employed by the Democratic women in Rhode Island and Louisiana were extraordinarily important to our understanding of the power behind their standpoints and their representation of their constituents. In both states, women legislators used their personal experiences to connect directly to their policy positions and to claim they were uniquely situated to be the authority on this issue and on what is best for their women constituents.

This study also examined the behavior of male lawmakers. For male lawmakers, I found that they were less likely to use both the pro-woman and fetal personhood frames. This is interesting considering the electoral gender voting gaps or other “War on Women” issues male lawmakers might be dealing with. Interesting future research might examine partisanship among male lawmakers, as well as the increased frame usage where there are other mitigating political or electoral circumstances. For example, would a male lawmaker be more likely to use the pro-woman frame when there was an upcoming election? Would a male lawmaker be more likely to use the frame after a gender-related scandal? With the first woman presidential nominee of a major party, other questions arise as well. If I were to take a closer look at state-level data, would I see male lawmakers from states that went strongly for Hillary Clinton more likely to employ a pro-woman frame in their abortion regulations?

This study could also be expanded to the federal level, as I discuss below, as there are always abortion regulations introduced at that level as well, though not nearly as many. The same questions would apply for federal level activity. Perhaps the stakes would be even higher for members of Congress, who enjoy greater name recognition with the public and in the media.

Future of the Pro-Woman Frame

The pro-woman frame has an uncertain future, though it is doubtful that it will fade away in the coming years. Certain abortion regulations that tend to lean on the frame more prominently are just now diffusing throughout the states. Anti-coercion, sex-selection, and ‘informed consent’ provisions if successful in one state, have a higher

chance of being introduced in another state (Mooney, 2001; Karch, 2007; Shipan and Volden, 2008). New types of provisions continue to use the pro-woman frame. For example, Arizona, Arkansas, Indiana, Georgia, North Carolina, South Dakota,⁴¹ and Utah have introduced or enacted bills that would mandate that doctors (falsely) tell women undergoing the medication abortion process (which requires they take two pills) that they can stop their abortion by not taking the second pill and by taking large doses of synthetic progesterone. They claim this would effectively “reverse” the abortion. Sponsors of these bills regard this as giving women options just in case a woman changes her mind or regrets her decision after taking mifepristone.⁴² Despite the singular, dubious scientific study behind these bills, seven state legislatures in the past two years (2015-2017) still believed there was an opportune political moment to introduce the bills. In an interview with local media, Utah State Republican Representative Susan Pulsipher asserted, “...this bill does not tell women what to do, “It simply gives [women] additional information to use when making that decision.””⁴³

Of these seven states, the bills in Arizona, South Dakota and Arkansas were signed into law. The bills in Georgia, Indiana, North Carolina, and Utah are still pending in their state legislatures. Planned Parenthood, the ACLU, and the Center for Reproductive Rights subsequently challenged Arizona’s bill SB 1318 in *Planned Parenthood Arizona, Inc. v. Brnovich* (2016). A district court then placed a preliminary injunction on the law, effectively blocking it from taking effect, and a further motion to

41 <https://rewire.news/article/2017/02/27/utah-gop-ignores-science-advances-abortion-reversal-bill/>

42 https://www.washingtonpost.com/news/post-nation/wp/2015/04/07/arizona-arkansas-tell-women-drug-induced-abortion-can-be-reversed/?utm_term=.84acbff5d227

43 <http://kuer.org/post/abortion-reversal-bill-passes-house-despite-pushback#stream/0> (Also note, Pulsipher was not the sponsor of the bill, though there are several women co-sponsors).

dismiss the case was rendered by the court. Though this was seen as a legal win for pro-choice advocates, in the other six states, there have not been any legal challenges, nor has the threat of one seem to deter lawmakers from introducing similar bills.

As discussed earlier in this study, the US Supreme Court decided the case of *Whole Woman's Health v. Hellerstedt* (2016) in June 2016. The pro-woman frame was used extensively throughout the law at issue and in the legal argumentation for the case. The attorney for Hellerstedt, Scott A. Keller, in oral arguments before the Supreme Court, asserted numerous times that the law was there to protect the health and safety of the women of Texas. Responding to Justice Kagan's questioning why Texas would want to pass a law that would hold abortion providers to a higher standard of care than procedures that are statistically more dangerous, such as colonoscopies and liposuction, Keller stated, "Justice Kagan, this bill was passed in the wake of the Kermit Gosnell scandal that prompted Texas and many other States to reexamine their abortion regulations," (*Whole Woman's Health Oral Arguments*, March 2, 2016). Calling upon the specter of Kermit Gosnell (as mentioned previously in this study, Gosnell was a criminal abortion provider) is a key element of the pro-woman frame. Keller's argument was that Texas' law was necessary to protect women from doctors like Kermit Gosnell and that the state of Texas was in its right to protect the health and safety of the women in that state.

Ultimately, the future of the pro-woman frame is potentially impactful for women's access to abortion. Though the variable for success of the bills using the pro-woman frame was not significant, the "success" of a regulation might come at the legal phase, after it is challenged. After all, new laws need to be implemented and survive legal

challenges. Future research might look into how the pro-woman frame fares in the courts how these laws might impact women's access to abortion.

Implications on Women as Citizens

The language of laws and bills can tell us a lot about how the state conceptualizes women as citizens. Analyzing framing devices allows us to see the justifications for, and the connections to, the lived realities of women. For example, if the pro-woman frame is used to justify regulations on the grounds that it protects women from physical and emotional harm, then scholars can directly interrogate those claims by measuring the harms either prevented or caused by such regulations. Scholars have already conducted studies on the emotional responses of women who were denied abortion care. Historical scholars have additionally written extensive accounts of pre-*Roe* abortion, and the widespread instances of women presenting to medical facilities after having complications from illegal abortion (Luker, 1984; Solinger, 2013).

Additionally, as many scholars have noted, the difference in the experiences of women in accessing their reproductive rights is very much conditioned by class and race (Nelson, 2003). The ability of women to access safe abortion has always been a matter of finance, not just legality. Feminist scholars can continue to push against pronouncements of pro-woman abortion regulations by pointing out the ways in which the regulations would disproportionately affect the most vulnerable and marginalized women. Women's protection is contingent upon her race or class and not just on her unplanned pregnancy. Allowing such pro-woman framing to pervade the abortion debate assumes that women's experiences with abortion access are monolithic, and that each woman gets equal

protection regardless of race or class. As it stands, rural women, low-income women, and women of color have trouble accessing abortion due to cost or location. This stratification has vast implications for their abilities to participate as citizens.

For over 40 years, reproductive rights and women's access to safe and legal abortion have been considered fundamental to women's full participation in society. As Justice O'Connor wrote in *Planned Parenthood v. Casey* (1992) "[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives" (p. 856). Feminist scholars have written extensively about women's second-class citizenship and unequal participation in the public sphere. Pro-woman justifications for laws that would discriminate against women should continue to be a site for feminist critique and analysis. If they are concerned with equality of citizenship, it is incumbent upon feminist scholars, or scholars interested in law and constitutionalism, to question justifications behind laws that are undergirded by antiquated gendered norms, and assumptions.

Future Directions

In addition to the more theoretical implications of this study, this research project could be expanded in a variety of directions, all of which would add significantly to the growing scholarship in women and politics, abortion politics, and gender and framing. As mentioned earlier, this same study could be applied to the federal level. A cursory glance shows that as of May 2017 in the 115th Congress, at least 24 bills have been introduced at the federal level that would regulate abortion or abortion funding. Several sponsors stand out including Senator Joni Ernst (R- IA) introduced the "Protect Funding for Women's

Health Care Act,” and Representative Diane Black (R- TN) introduced three bills, public funds ban for abortion providers, a conscience clause and a bill to defund Planned Parenthood. Representative Trent Franks (R- AZ) introduced a Prenatal Nondiscrimination Act bill as well, showing that sex-selection abortion bans are not simply a state matter. In the 114th Congress about 42 bills were introduced that would regulate abortion, not counting appropriation bills. Noteworthy titles include the “Pregnant Women Health and Safety Act,” “Abortion Non-Discrimination Act,” of which there were several bills, “End Trafficking of the Terminated Unborn Act,” and two occurrences of the “Women’s Public Health and Safety Act.” Additionally, there were two bills that would establish a national week to honor “community-supported pregnancy centers” also known as Crisis Pregnancy Centers (CPCs), entitled “National Pregnancy Center Week.” As noted earlier in this study, CPCs are non-medical antiabortion advocacy center that often rent spaces near abortion clinics to attempt to confuse and dissuade women from obtaining abortions.

Additionally, with such a smaller caseload to work with at the federal level, it would be possible to analyze archives of floor speeches given by representatives on these bills. A similar content analysis could be employed to interpret the rhetorical frames and strategies used by the various lawmakers who rise in support of these bills. This could be used to compare and contrast the state and federal levels, or it could be used as a stand-alone study to show the frame’s use across a variety of levels of government.

Interest groups, though acknowledged extensively as being the pioneers of this frame, were not analyzed as active in the bill introduction process. I afforded a great deal of agency to state lawmakers in this study, as I believe, even the least professionalized

legislature's members can pick and choose from pre-drafted bills that come across their desk. I would absolutely keep defending that standpoint and approach. However, it would certainly add another dimension to this study if interest group activity were analyzed. Interest groups provide much of the model legislation provided to lawmakers—it was clear to see which bills were provided in full to lawmakers to fill in their state and submit—the language was in some cases identical between states. As such, to explain a bit further about what makes the pro-woman frame so widely used across states, interest group activity and model legislation could be measured. This would also be a perfect opportunity to expand the time period of this study, perhaps going back further to help identify the emergence of the pro-woman frame in regulatory abortion bills. As we know, the frame originated from social movement organizations, many of which have political arms active in drafting and lobbying for specific policies. Being able to assess when the frame emerged in social movements, and when it then presented in legislation would be interesting as it would show how quickly—or slowly—an interest group would be able to influence the framing of an issue.

Similarly, the media is a driver of frame domination. As such, it would be fruitful to conduct a study applying the methods used by Baumgartner and Jones (2009) by looking at the use of the pro-woman frame in the media. First it would be helpful to understand the role in the media in bringing abortion to the public's attention, as well as the attention of political elites. A future study could include a count of the presence of the pro-woman frame in articles from the top news sources, looking at various factors such as emergence over time, strength of the frame, and any kind of positive or negative impression of that frame.

Another direction for future research would be to focus in on the important question of intersectionality that was raised in this study. The Louisiana case study was compelling and demonstrated a significant standpoint that the Democratic women of color were taking on this issue. To truly understand and assess this point, it would be necessary to conduct in-depth interviews on Sen. Broome and Rep. Jackson, and their colleagues. As Rep. Jackson is also the chairwoman of the Black Caucus in the Louisiana Assembly, it would be interesting to hear what her colleagues' views on abortion were and what they thought about the bills she and her other Democratic colleagues were introducing that would regulate abortion.

Additionally, as the landscape with regards to access to abortion keeps changing, it is becoming clearer that Louisiana's clinics are rapidly dwindling in numbers. As I write, Louisiana only had three clinics left in major metropolitan cities, and they were being threatened with closure by Rep. Jackson's TRAP provision, HB 388, which was signed in to law by Gov. Bobby Jindal in 2014. The law was challenged and blocked by a district court⁴⁴, then appealed to the Fifth Circuit Court, which upheld the law. The petitioners filed an emergency appeal to the US Supreme Court, as at this point, *Whole Women's Health* had been decided and the Louisiana law at issue was very similar to the one that was struck down in that case. Unsurprisingly, the US Supreme Court vacated the Fifth Circuit Court's stay and the law was unable to go into effect. However, this would have potentially shuttered the last remaining clinics in this state. It would be fascinating to hear from Rep. Jackson and colleagues about the potential effect her law could have on the people of Louisiana, especially marginalized women who have issues accessing

44 <https://rewire.news/article/2016/01/27/louisiana-cant-enforce-gops-clinic-closure-law-court-rules/>

abortion, even when available. Looking at this case from an intersectional standpoint would also add an essential dimension to the question: who is allowed to represent women? Certainly, Rep. Jackson or any other woman lawmaker could call upon her descriptive representation to show how her presence in the legislature matters. However, it is critical to be able to assess whether those representatives are making the connection between descriptive and substantive representation. Are they claiming to act *for* women?? How do they define that? What would that entail? And what are the conditions under which they appeal to their standing ‘as women’ to further a political cause? These are still significant questions in the field of women and politics, and investigation into timely and clearly gendered issues such as abortion can help us answer these questions.

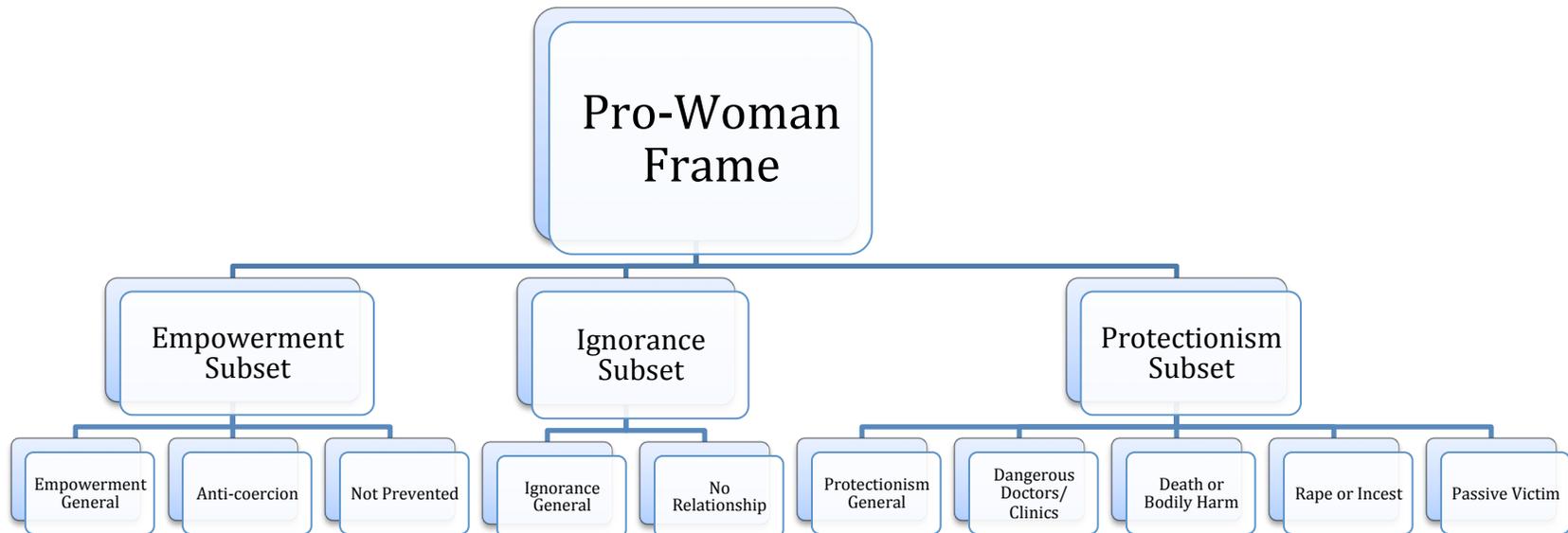
Lastly, with regard to the obvious gap in the mainstream literature on gender and framing, it would be important to be able to make more normative arguments regarding how gender is used as a framing device. Such a rich field of study, with incredible implications for political strategy, communication, and public perception, really needs to have more of a gendered angle. Again, it is unmistakable that the 2016 presidential election brought about an entirely obvious gendered rhetoric into the public eye. When the candidates were referencing size of body parts in not-so-subtle ways, and audiences were using derogatory gendered slang to refer to other candidates, such a political landscape begs analysis. The question arising from this study would be to look at the use of the pro-woman frame as political opportunity. As mentioned earlier, now that we understand who uses it, we can begin to ask why.

* * *

When lawmakers use frames, they do so with the knowledge that they are signaling something very specific to their constituents. In the case of abortion, they are not simply signaling what their vote will be, or their allegiance to party, or their political ideology; they are signaling a worldview. This view is one that is deeply rooted in other gender-discriminatory policies in the US—policies that have been the focus of long legal and legislative battles. These policies are steeped in gender norms-- that women, like fairy tale princesses, are inherently in need of protection, or that their biological functions tie them to a life of domestic servitude for the good of the country. This frame also signals what a lawmaker thinks about the relationship between the woman and the state. The pro-woman frame undeniably situates the state as knowing what is in ‘women’s best interest’ and therefore solely responsible for protecting women’s interests. As such, the state is in the ultimate position of controlling women’s reproductive capabilities. Scholars and movement actors must continuously analyze the underlying arguments and principles, which establish the relationship between women and the state. When we do, it is possible to reimagine women’s reproductive rights from a place of dignity and autonomy, divorced from archaic norms about gender, but with an understanding of its inherent connection to women’s standing as full and equal citizens.

Appendix A – Codebook

A.1 Visual Representation of Pro-Woman Frame and Subsets



A.2 Codebook and Language Instructions

Pro-Woman Frame Subsets

Each of the Roman numerals below indicates a subset of the pro-woman frame. As specified below by the letters and numbers, each subset also has a variety of different categories within that make up the elements of that subset. The language in the bulleted lists under each letter and number comes straight from the bills themselves. I pulled the language from my NVivo codebook and consolidated any statements that were the same or very similar. For example, a coded statement might say: “The information provided pursuant to this paragraph must be objective, nonjudgmental and designed to convey only accurate scientific information about the unborn child,” or “the information provided must be objective, scientific, and nonjudgmental.” These two statements are close enough for one of them to be represented here for the purposes of clarity and understanding. However, they would both be coded as “Empowerment” in the database. The focus of the language below is on the woman. As is clearly evident in the actual phrases from bills in my dataset, the regulations are framed as necessary for women’s empowerment, education, or protection.

Pro-Woman

I. Empowerment

A. Empowerment General

1. Women need information that is accurate and complete

- Every woman considering abortion receives complete information
- Every woman who chooses to have an abortion has first received accurate information
- Contains objective, unbiased, and comprehensive information and is reviewed and approved for medical accuracy

- If the woman chooses to view the ultrasound image, it shall be provided to her in a respectful and understandable manner, without prejudice and intended to give the woman the opportunity to make an informed choice.
- The doctor must tell you how long you have been pregnant and must give you a chance to ask questions and discuss your decision about the pregnancy carefully and privately in your own language.
- Should a woman be unable to read materials provided to her, they shall be read to her. Should a woman need an interpreter to understand the information presented in written materials or informational videos, an interpreter shall be provided to her. Should a woman ask questions concerning any of the information or materials, answers shall be provided in a language she can understand.
- Ensure that the information focuses on her individual circumstances and that she has adequate opportunity to ask questions
- Prior to the scheduled abortion and before the woman provides her written consent to the abortion, the referring physician or the physician performing the abortion must orally inform the woman of: the nature of the proposed abortion method and associated risks and alternatives that a reasonable patient in the woman's position would consider material to the decision of whether to undergo the abortion

2. Women need information about the fetus

- The information provided pursuant to this paragraph must be objective, nonjudgmental and designed to convey only accurate scientific information about the unborn child
- The person performing the intended abortion shall inform the pregnant woman in writing no later than twenty-four (24) hours before the performance of the intended abortion: (1) that the unborn individual that the pregnant woman is carrying possesses a heartbeat; and (2) of the statistical probability of bringing the unborn human individual to term based on the gestational age of the unborn human individual
- Information that is designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments
- The pregnant woman has a legitimate interest in knowing the likelihood of the fetus surviving to full-term birth based upon the presence of cardiac activity.

3. Women need information about the method and physician

- Objective information that describes the methods of abortion
- Provide every pregnant woman with a copy of the drug's label.
- Provide every pregnant woman write the name and phone number of the physician and a place to receive follow-up care

4. Women need information about agencies

- Identify on a geographical basis public and private agencies available to assist a woman in carrying her unborn child to term, and to assist her in caring for her dependent child or placing her child for adoption, including agencies commonly known and generally referred to as pregnancy resource centers, crisis pregnancy centers, maternity homes, and adoption agencies.
- List providers of free ultrasound services

- Lists the agencies that offer alternatives to abortion
 - Agencies and services that are available to assist a woman throughout pregnancy, at childbirth, and while her child is dependent
 - Information on the availability of medical assistance benefits for prenatal care, childbirth, and neonatal care
 - Many public and private agencies exist to provide counseling and information on available services. You are strongly urged to seek assistance from such agencies in order to obtain guidance during your pregnancy.
5. Pregnant people need to be able to request things from their provider
- At the request of the person on whom an abortion is to be performed, a qualified licensed health care provider shall administer anesthesia in a manner consistent with standard medical practice in the community
 - On request of the pregnant person undergoing the ultrasound, provide a medical description of the displayed ultrasound image
 - Sex of the fetus may be disclosed only upon request of the pregnant woman
 - The woman has the right to request the physician to use the method of abortion that is most likely to preserve the life of the unborn child
 - A post-abortion medical visit is offered and, if requested, schedule for two (2) to three (3) weeks after the abortion procedure, including a medical examination and a review of the results of all laboratory tests
6. Women have the right to quality images that are displayed so she may see
- Image quality standards that apply to an ultrasound examination of an unborn child that are consistent with the standard of medical practice in the community
 - Simultaneously display the ultrasound image to allow the pregnant person to see the image voluntarily
 - Perform an obstetric ultrasound on the pregnant woman, using either a vaginal transducer or an abdominal transducer, whichever would display the embryo or fetus more clearly.
 - The ultrasound images shall be displayed on the screen that is within the woman's line of vision. The woman has a right to view the ultrasound before an abortion.
7. Women have the right to know and see things
- Ultrasound Opportunity Act
 - Right to Know and See Act
 - Whole Woman's Health Funding Priorities Act
 - Voluntary and written informed consent
 - In an individual, private setting
 - The information required by this Section to be communicated orally and in person to the woman is provided to her individually and in a private room to protect her privacy
 - Shall be informed of her right to view the ultrasound image/ hear fetal heart tone
 - Offer to provide the woman with an opportunity to view the active ultrasound
 - The decision not to fund abortions places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy

8. Women have pre-procedure rights

- The woman has a right to review the website and that a printed copy of the materials on the website will be provided to her free of charge if she chooses to review these materials
- The woman's undeniable right to see an ultrasound if an ultrasound was taken and the woman requests to see it
- A reasonable waiting period, as contained in this chapter, is critical to the assurance that a woman elect to undergo an abortion procedure only after having the fullest opportunity to give her informed consent thereto.

9. Women have the right to child support

- The father of a child is liable to assist in the support of that child, even if the father has offered to pay for an abortion, and that the law allows adoptive parents to pay costs of prenatal care, childbirth, and neonatal care
- Information about the judicial enforcement of child support.
- Establish and manage a statewide list of attorneys providing pro bono adoption services for women with unwanted pregnancies who would have selected abortion, if lawful in this state, rather than adoption.

10. Women have rights during the procedure

- The woman is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled.
- The mother directs that anesthesia not be administered to the fetus
- Woman considering an abortion the opportunity to choose anesthesia
- You are not required to pay any amount for the abortion procedure until the 24-hour waiting period has expired

11. Women have legal rights

- It shall never be a bona fide occupational qualification that an employee or applicant for employment seek or obtain an abortion

12. The state cares about patient advocacy

- Surgical assistants to receive training in counseling, patient advocacy
- You have the right to a telephone in a private room to contact any local or state law enforcement agency to receive protection from any actual or threatened physical abuse or violence.
- Prioritization of public health care funding to primary and preventive care also reflects sound health care policy. Individuals who have a primary care clinician are more likely to access health care services, leading to more favorable long-term outcomes.
- That one of its principal missions is to educate, counsel, and otherwise assist women to help them maintain their relationship with their unborn children

13. The state assures feminist/civil rights

- Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination and Equal Opportunity for Life Act
- Women are a vital part of American society and culture and possess the same fundamental human rights and civil rights as men
- Sex selection abortion is barbaric, and described by scholars and civil rights advocates as an act of sex based violence, predicated on sex discrimination; the targeted victims of sex selection abortions are overwhelmingly female, and the selective abortion of females has been termed "female infanticide"
- "Son preference" is one of the most evident manifestations of sex or gender discrimination in any society, undermining female equality, and fueling the elimination of females' right to exist in instances of sex-selection abortion

B. Anti-Coercion

1. Women must be free from coercion

- "Forced Abortion Prevention Sign Act".
- It is unlawful for anyone to make you have an abortion against your will
- It is unlawful for any person to coerce a woman to undergo an abortion
- An abortion otherwise permitted by law shall be performed or induced only with the informed written consent of the pregnant woman, given freely and without coercion.
- Threat of force to intentionally injure or intimidate any person for the purpose of coercing a sex-selection abortion

2. Women must be notified of anti-coercion through signs

- Notice: No one can force you to have an abortion. It is against the law for a spouse, boyfriend, parent, friend, medical care provider, or any other person, regardless of that person's relationship to you, to force you to have an abortion.
- An abortion clinic shall conspicuously post signs that are visible to all who enter the abortion clinic, that are clearly readable and that state it is unlawful for any person to force a woman to have an abortion and a woman who is being forced to have an abortion has the right to contact any local or state law enforcement or social service agency to receive protection from any actual or threatened physical, emotional or psychological abuse. The signs shall be posted in the waiting room, consultation rooms and procedure rooms.

3. The state mandates physician screenings to look for coercion

- The physician or qualified person assisting the physician shall orally screen the patient for coercion to abort
- The form must also indicate that the woman's decision not to view the ultrasound was not based on any undue influence from any third party to discourage her from viewing the images and that she declined to view the images of her own free will.

C. Not Prevented

1. Women have the right to avert eyes/not listen

- Nothing in this section shall be construed to prevent a pregnant woman from averting her eyes from the ultrasound images required to be provided to and reviewed with her.
- Nothing in this section shall be construed to prevent the pregnant woman from not listening to the sounds detected by the hand-held Doppler fetal monitor

2. Women shall not be prevented from purchasing separate rider for insurance

- This section does not prevent an individual from purchasing optional supplemental coverage for elective abortions for which a separate premium shall be paid in the health insurance market outside of the state health insurance exchange
- Private insurance contracts, plans, and policies often offer optional abortion coverage through the purchase of a separate rider.

II. Ignorance

A. Ignorance General

1. Women are inherently uninformed

- Woman's uninformed decision
- An Act To Educate Women on the Medical Risks Associated with Abortion
- Abortion Information Act.
- An important component of full informed consent
- The State may take measures to ensure that a woman's choice is informed.
- It is desirable and imperative that an abortion decision be made with full knowledge of its nature and consequences
- The knowledgeable exercise of a woman's decision to have an abortion depends on the extent to which she receives sufficient information to make an informed choice between 2 alternatives: giving birth or having an abortion.
- Many women now seek or are encouraged to undergo abortions without full knowledge of the development of the unborn child or of alternatives to abortion.
- Women and girls often obtain abortions without a full understanding of the potential physical and mental health consequences to themselves and the unborn baby they are carrying.
- Ensure that every woman considering an abortion receive complete information on the reality and status of her pregnancy and of her unborn child and that every woman submitting to an abortion do so only after giving her voluntary and informed consent to the abortion procedure
- Materials designed to inform the female

- The pregnant woman has read the required materials and that the physician believes she understands the information provided to her.
- Be written in a manner 42 designed to permit a person unfamiliar with medical terminology to understand its purpose and 43 content
- By having an abortion, the woman's existing relationship and her existing constitutional rights with regards to that relationship will be terminated
- The materials shall inform the woman of the benefits of adoption, including the requirements of confidentiality in the adoption process, the importance of adoption to individuals and society, and the state's interest in promoting adoption by preferring childbirth over abortion.

2. Abortion is voluntary only if...

- Consent to an abortion is voluntary and informed only if all of the following are true
- A termination of pregnancy is voluntary and informed only if

3. Women are laypersons when it comes to technology and statistics

- Full Disclosure Ultrasound Act.
- In a manner understandable to a layperson, 126 a verbal explanation of the results of the sonogram images
- When reviewing the ultrasound with the woman, there shall be a verbal description of all relevant features of the ultrasound with audible heartbeat if present.
- Provide a simultaneous verbal explanation of what the ultrasound is depicting
- The development of ultrasound technology has enhanced medical and public understanding, allowing the expectant woman to watch the growth and development of the unborn child in a way previous generations could never have imagined.
- An ultrasound can provide useful information regarding the viability of the pregnancy and the risk of natural miscarriage or ectopic pregnancy
- The person intending to perform the abortion shall inform the pregnant woman in writing that the unborn child has a fetal heartbeat and, to the best of the person's knowledge, the statistical probability of bringing the unborn child to term based on the gestational age of the unborn child

B. Women have no relationships with their abortion provider

- Most women who seek abortions at these facilities do not have any relationship with the physician who performs the abortion either before or after the procedure.
- They do not return to the facility for post-surgical care. In most instances, the woman's only actual contact with the abortion provider occurs simultaneously with the abortion procedure, with little opportunity to ask questions about the procedure, potential complications, and proper follow-up care.
- In the overwhelming majority of cases, abortion surgery and medical abortions are scheduled for a pregnant mother without the mother first meeting and consulting with a physician or establishing a traditional physician-patient relationship

III. Protectionism

A. Protectionism General

1. There are psychological concerns/risks surrounding abortion

- Depression and related psychological distress.
- A woman may elect an abortion, only to discover later, with devastating psychological consequences, that the woman's decision was not fully informed
- Receipt of complete and accurate information on the reality and status of a 14 woman's pregnancy by the woman is essential to the woman's psychological and physical 15 well-being
- The decision to abort is an important and often stressful one
- Abortion is a highly personal and very sensitive procedure which results in stress and concern for the patient that is unique to the decision to have an abortion.
- It is essential to the psychological and physical well-being of a woman considering an abortion
- Abortion services are rationally distinct from other routine medical services, because of the particular gravitas of the moral, psychological, and familial aspects of the abortion decision.
- Inadequately protects the maternal health of women seeking or obtaining post-viability abortions; fails to promote the long-term physical, emotional, familial, and psychological well-being of women obtaining abortions;
- After nearly four decades of legal human prenatal murder, it is now abundantly clear that the practice has negatively impacted the people of this state in many ways, including economic, health, physical, psychological, emotional, and medical well-being.
- If the physician is male then the other individual shall be female

2. There are physical concerns/risks surrounding abortion

- Women's Health and Safety Act
- Women's Health Protection
- The purpose of this Act is to protect the health and safety of women
- The existing standard of care for screening and counseling before an abortion is not adequate to protect the health needs of women
- The nature and risks of undergoing or not undergoing the proposed procedure
- And is, in the judgment of the attending physician, in the best medical interest of such pregnant woman
- The medical risks of having an abortion and of carrying the fetus to term.
- Provide a safe and healthy environment that minimizes infection exposure and risk to patients
- That there are physical risks to the woman in having an abortion, both during the abortion procedure and after.
- Evaluated the pregnant woman to identify the presence of any risk factors associated with abortion

- Information concerning the medical risks associated with each abortion procedure, including the following when medically accurate: (A) The risks of infection and hemorrhaging. (B) The potential danger: (i) to a subsequent pregnancy; or (ii) of infertility. (C) The possibility of increased risk of breast cancer following an induced abortion and the natural protective effect of a completed pregnancy in avoiding breast cancer. (3) Information concerning the medical risks associated with carrying the child to term.
- Confirm that the pregnancy is terminated by conducting ultrasound imaging; and (2) assess the degree of bleeding experienced by the pregnant woman.
- The performance of a diagnostic ultrasound examination of the fetus, now a standard practice at abortion facilities, protects the health of the woman seeking an 18 abortion by verifying an intrauterine pregnancy, as undiagnosed ectopic pregnancies can result in potentially fatal complications and infertility.
- Monitoring the progress of each patient throughout the procedure and recovery period
- There must be a specified minimum length of time that a patient remains in the recovery room according to the type of abortion procedure and duration of gestation
- Because the failure and complications from medical abortion increase with increasing gestational age, because the physical symptoms of medical abortion can be identical to the symptoms of ectopic pregnancy, and because abortion-inducing drugs do not treat ectopic pregnancies but rather are contraindicated in ectopic pregnancies
- All risks to the pregnant woman and to the unborn child of administering anesthesia.
- Puts abortion patients at unreasonable risk.
- The immediate and long-term medical risks associated with the proposed abortion method, including without limitation 8 the risks of: (a) Cervical or uterine perforation; (b) Danger of subsequent pregnancies; (c) Hemorrhage; (d) Increased risk of breast cancer; and (e) Infection
- The risks for second trimester abortions are greater than for first trimester abortions. (B) The risk of hemorrhage, in particular, is greater and the resultant complications may require a hysterectomy, other reparative surgery, or a blood transfusion; (5) As stated in *Williamson v. Lee Optical*, 348 U.S. 483, 486 (1955), the State of Arkansas has a legitimate concern for the public's health and safety
- That partial-birth abortions pose serious risks to the health of a woman, no credible medical evidence exists that partial-birth abortions are safe, and partial-birth abortions are never medically necessary to preserve the health of the mother. (b) that the state has a compelling interest in preserving and protecting the life of the mother
- Equipment and services must be located in the recovery room to provide appropriate emergency resuscitative and life support procedures pending the transfer of the patient
- Sex-selection and race-selection abortions are elective procedures that do not in any way implicate a woman's health.
- Including the increased risk of breast cancer associated with the loss of protective effect of a first full-term pregnancy and any independent risk as supported by peer-reviewed medical journals
- The woman has reason to believe that the furnishing of notice to her spouse is likely to result in the infliction of bodily injury upon her by her spouse or by another individual.

3. Medication abortion is specifically risky

- Abortion-Inducing Drug Safety Act
- The use of mifepristone presents significant medical risks to women
- Abortion-inducing drugs are associated with an increased risk of complications relative to surgical abortion. The risk of complications increases with increasing gestational age, and, in the instance of mifepristone, with failure to complete the two-step dosage process
- To protect women from the dangerous and potentially deadly off-label use of abortion-inducing drugs, such as, but not limited to, mifepristone.
- As of August 2010, a European drug manufacturer acknowledged at least twenty-nine (29) deaths worldwide related to mifepristone use; (9)(A) Medical studies have indicated that one (1) to two (2) out of every one thousand (1,000) women who undergo mifepristone abortions will require emergency blood transfusion for massive hemorrhage. (B) By May 2006, the United States Food and Drug Administration reported that at least one hundred sixteen (116) women required blood transfusions for massive bleeding after mifepristone abortions, with at least fifty-four (54) losing more than one-half (1/2) of 10 their blood volume; and (10)(A) The absence of proper follow-up care after mifepristone abortions has resulted in at least seventeen (17) women having undetected ectopic pregnancies.
- Due to a significant number of drug-induced abortions later requiring surgical intervention and consistent with the provisions of section 188.080, no physician shall prescribe or administer RU-486 (mifepristone) or any other drug administered for the purpose of inducing an abortion unless the physician: care located within thirty miles of the location at which the abortion is induced; and were administered to perform surgical intervention, including but not limited to surgical abortion.
- The use of mifepristone presents significant medical risks to women, including but not limited to *C. sordellii* bacterial infection, septic shock, toxic shock syndrome, adult respiratory distress syndrome from sepsis, *Escheria coli* sepsis, group B *Streptococcus* septicemia, disseminated intravascular coagulopathy (DIC) with hepatic and renal failure, severe pelvic infection and massive hemorrhage.

4. The state role is to protect women's health and safety

- Provide for the protection of public health
- The State has legitimate interests from the outset of pregnancy in protecting the health of a woman
- The Legislature finds that despite the recognition by the United States Supreme Court in *Roe* and *Casey* that "the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman
- An individual's health is of the highest priority where medical procedures are concerned
- The risk of infection, hemorrhage, danger (ii) to subsequent pregnancies and infertility. (g) a statement setting forth an accurate rate of deaths in which the abortion procedure was a substantial contributing factor.
- Require a health care provider who performs an abortion to administer an ultrasound procedure for the health benefit of the patient prior to engaging in any procedure that will terminate the pregnancy.

- Promote and enforce the highest standard for care and safety in facilities performing abortions in this state
- The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

B. Dangerous Doctors/Clinics

1. Doctors are non-compliant and clinics are unclean

- Abortion or reproductive health centers have often failed to meet acceptable standards of medical care
- This alarming level of regulatory non-compliance among abortion and reproductive health centers in Alabama puts abortion patients at unreasonable risk.
- At abortion or reproductive health centers, patients are often treated in a manner inconsistent with a traditional physician/patient relationship.
- Because abortion and reproductive health centers do not currently provide the level of personal contact found in many physician/patient relationships and in other medical care settings, it is necessary for the Legislature to mandate the personal presence and participation of the physician in the process.
- An abortion clinic must provide conspicuous notice on any form or medium of advertisement that the abortion clinic is prohibited from performing abortions in the third trimester or after viability.

2. The only safe clinics are ASCs

- Abortion or reproductive health centers are not operated in the same manner as ambulatory surgical treatment centers or physician offices.
- The ambulatory surgical center shall meet the requirements of 42 C.F.R. § 416 before a license is issued. The department of inspections and appeals shall provide the necessary personnel to inspect the ambulatory surgical center to determine if the ambulatory surgical center complies with necessary requirements before a license is issued. Ambulatory surgical centers that are certified under the federal Medicare program and thereby meet the requirements of 42 C.F.R. § 416 shall be licensed without inspection by the department of inspections and appeals.
- Establishment and enforcement of rigorous and medically appropriate standards of care and safety in abortion clinics
- The Department shall establish minimum standards, rules, and regulations for the licensing and operation of abortion clinics. Such minimum standards, rules, and regulations become effective upon promulgation in accordance with the procedures specified in the administration procedure act.
- An abortion clinic must meet the following requirements: (1) Be constructed, arranged, modified, or maintained to ensure the safety and well-being of patients, employees, and visitors to the clinic. (2) Provide a physical plant and equipment that meet state fire prevention and building safety codes or rules established by the fire prevention and building safety commission or the state department. (3) Provide a safe and healthy environment that minimizes infection exposure and risk to patients,

employees, and visitors to the clinic. (c) The state department shall inspect an abortion clinic at least one (1) time per calendar year.

- Facilities for the performance of abortions. At a minimum these rules and regulations shall prescribe standards for: (1) Adequate private space that is specifically designated for interviewing, counseling and medical evaluations; (2) dressing rooms for staff and patients; (3) appropriate lavatory areas; (4) areas for preprocedure hand washing; (5) private procedure rooms; (6) adequate lighting and ventilation for abortion procedures; (7) equipment; (8) equipped to meet the patients' needs; (9) emergency exits to accommodate a stretcher or gurney; (10) areas for cleaning and sterilizing instruments; and (11) necessary equipment and supplies. (c) surgical or gynecologic examination tables and other fixed postprocedure recovery rooms that are supervised, staffed and adequate areas for the secure storage of medical records and equipment and supplies, including medications, required for the conduct, in an appropriate fashion, of any abortion procedure that the medical staff of the facility anticipates performing and for monitoring the progress of each patient throughout the procedure and recovery period;

3. Abortion is only safe if performed in hospitals

- An abortion performed during the third trimester of pregnancy shall be: (i) performed in a hospital
- A physician who determines that the probable gestational age of the fetus of a patient who is a pregnant woman is at 19 or more weeks shall perform an abortion on that patient only in a hospital that has a neonatal unit

4. Abortion providers put profits before patients

- Abortion is a very profitable procedure most often engaged in by stand-alone clinics without many of the safeguards found in a traditional physician/patient relationship or other medical care setting
- Solicits or accepts monies to finance a sex-selection or race-selection abortion
- Many abortion facilities or providers hire untrained and unprofessional "counselors" to provide preabortion counseling, but whose primary goal is actually to "sell" or promote abortion services.
- Abortion facilities or providers offer only limited and/or impersonal counseling opportunities. (g) many abortion facilities or providers hire untrained and unprofessional "counselors" whose primary goal is to sell abortion services.

3. Abortion providers are often negligent

- A physician shall not diagnose and prescribe a medical abortion for a patient who is or is presumed to be pregnant without first personally performing a physical examination of the patient.
- An abortion may not be performed upon a woman before a pregnancy test has been administered in the medical facility where the abortion is to be performed and the pregnancy test results have been confirmed prior to the abortion.
- Nothing in this paragraph relieves a physician of his or her duty to disclose any other material fact a reasonable patient similarly situated might consider relevant to making an informed decision regarding the termination of her pregnancy.

- A health care provider shall not use telemedicine to provide an abortion.
- A physician shall only diagnose and prescribe a medically induced abortion in person, and shall not utilize other means, 24 such as an internet web camera, to do so.
- Has the ability to provide surgical intervention in cases of incomplete abortion or severe bleeding, or has made and documented in the patient's medical record plans to provide such emergency care through other qualified physicians who have agreed in writing to provide such care
- The ultrasound shall be performed by a qualified person or persons.
- Is a physician and has a documented referral from another physician not legally or financially affiliated with the physician performing or inducing, or attempting to perform or induce the abortion and both physicians provide a written determination, based upon a medical judgment arrived at using and exercising that degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent physician in the same or similar circumstances and that would be made by a reasonably prudent physician, knowledgeable in the field, and knowledgeable about the case and the treatment possibilities with respect to the conditions involved
- Court testimony by Planned Parenthood and other physicians demonstrates that physicians routinely fail to follow the mifepristone protocol as tested and approved by the FDA.
- To ensure that physicians abide by the protocol tested and approved by the FDA for such abortion-inducing drugs, as outlined in the drug labels.
- A physician who performs an abortion shall notify the patient of the location of the hospital at which the physician has privileges and where the patient may receive follow-up care by the physician if complications arise.
- Is able to assure patient access to medical facilities equipped to provide blood transfusions and resuscitation, if necessary as a result of or in connection with the abortion procedure, on a twenty-four (24) hour basis
- Make all reasonable efforts to ensure that the woman returns for the scheduled appointment.
- The physician who induces the abortion or a person acting on behalf of the physician who induces the abortion shall make all reasonable efforts to ensure that the patient returns twelve (12) to eighteen (18) days after the administration or use of mifepristone

4. Admitting privileges for providers is the only way to ensure competency

- The physician who contracts to handle emergencies must have active admitting privileges and gynecological/surgical privileges at the hospital designated to handle any emergencies associated with the use or ingestion of the abortion-inducing drug.
- For a surgical abortion who has admitting privileges at a health care institution that is classified by the director as a hospital
- A physician may not perform an abortion unless the physician has admitting privileges at a hospital located: (1) in the county; or (2) in a county adjacent to the county; in which the abortion is performed.
- No physician may perform an abortion in an abortion facility without: (a) Having admitting privileges at a local hospital and staff privileges to replace local hospital on-staff physicians; and (b) Being board-certified or eligible in obstetrics and

gynecology. (5) A staff member trained in cardiopulmonary resuscitation shall be present at an abortion facility during all operating hours.

5. Providers must be faced with consequences for non-compliance

- That follow-up care by the physician, or another physician or nurse designated by the physician, is available on an appropriate and timely basis when clinically necessary
- Any physician who fails to provide informed consent prior to performing an abortion may be guilty of unprofessional conduct and liable for damages
- Notwithstanding any law to the contrary, the secretary of the department may issue an immediate suspension of a license if an investigation or survey determines that the applicant or licensee is in violation of any provision of this Part, in violation of the rules promulgated by the department, or in violation of any other federal or state law or regulation, and the secretary determines that the violation or violations pose an imminent or immediate threat to the health, welfare, or safety of a client or patient.

6. Providers Mislead, Harass, and are Unethical

- Require a physician who offers to perform or performs terminations of pregnancy in an abortion clinic to annually complete a 3-hour course related to ethics as part of the licensure and renewal process
- Due to the potential of an inherent conflict of interest, the determination of viability and the performance of the ultrasound required under this subsection may not be performed by a physician who provides reproductive health services at an abortion clinic
- That a partial-birth abortion confuses the medical, legal, 13 14 and ethical duties of a physician to preserve and promote life.
- It is unlawful for a licensed health care professional who performs abortions, or an employee or agent of a health facility that performs abortions, to intentionally and repeatedly contact a person against the person's wishes and without reasonable justification
- Any physician who, once the matter of the viability or nonviability of the fetus has been determined within a reasonable degree of medical probability, knowingly and willfully misrepresents the gestational age or stage of fetal development of a viable fetus in an entry into any medical record and who fails to use the standard of care

C. Certain Cases are Exceptional: Bodily Harm/Death

1. Women who are on the verge of death or serious injury have exceptional cases

- An abortion performed to save the life of the mother
- The physician certifies in writing that an abortion is necessary to save the life of the mother
- Performs a medical procedure designed to or intended to 7 prevent the death of a pregnant woman or in reasonable medical judgment, to 8 preserve the life or health of the pregnant woman.
- Including a life-endangering physical condition caused by or arising from the pregnancy itself.

- The woman's life shall constitute an overriding and superior consideration to the concern for the life of the fetus, and the woman's health shall constitute an overriding and superior consideration to the concern for the health of the fetus when such life or health concerns are in conflict. For purposes of this subsection, health considerations refer to medical judgment exercised in light of factors exclusively regarding the physical well-being of the patient.
- “No public funds will be used to pay for any abortion, except to save the mother’s life”
- Except in an extreme case of medical emergency where the life of the mother is threatened by the pregnancy
- Any act of a person detrimental to an unborn human life, when not necessary in defense of the life of the mother bearing such unborn life, which unnaturally terminates that unborn life, is a deprivation of that unborn child’s unalienable right to life.

2. Certain abortions may be medically necessary

- The department may not pay for abortion services under this chapter unless the abortion services are for a medically necessary abortion
- The limitations in (a) - (f) of this section do not apply to an abortion performed when (1) the life of the mother is endangered by a physical disorder, physical illness, or physical injury; (2) the life of the mother is endangered by a physical condition caused by or arising from the pregnancy itself
- The requirements of this section shall not apply in the case of a medical emergency which is so severe and immediate that it would prevent a prudent physician from complying with these requirements
- A physician has determined, based on good faith clinical judgment, that (A) a condition exists that so complicates the health of a pregnant woman that the immediate termination of the woman's pregnancy is necessary to avert the death of the pregnant woman; or (B) a delay in performing an abortion will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman
- Or that the woman has been diagnosed as having a condition that, on the basis of a physician's good faith clinical judgment, would create a serious risk of substantial and irreversible impairment of a major bodily function if the woman delayed terminating her pregnancy.
- The abortion is necessary to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman. For purposes of this section, "major bodily function" includes, but is not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- If, in reasonable medical judgment, the pregnant woman has a condition which so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical

impairment of a major bodily function of the pregnant woman, not including psychological or emotional conditions.

- Impairment of a major bodily function, not including psychological or emotional conditions
 - This prohibition shall not apply to an abortion performed when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself,
 - If, at the time the woman schedules or arrives for her appointment to obtain an abortion, a copy of a medical record or documentation is presented which provides evidence that the woman has been diagnosed as having a condition that, on the basis of a physician's good faith clinical judgment, would create a serious risk of substantial and irreversible impairment of a major bodily function if the woman delayed terminating her pregnancy.
 - The State shall not deny or interfere with the performance of a partial-birth abortion that is necessary to protect the life of a female whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition by or arising from the pregnancy itself.
 - A mother is not going to die by recognizing her child's right to life. When the mother needs a life-saving medical operation, then an indirect abortion is not legally or morally considered abortion because it is not performed with specific intent to bring death to a preborn child. The death of the child may be permitted as an indirect and unavoidable result of steps necessary to save the mother's life.
 - No health insurance contract, plan, or policy delivered or issued for delivery in [state] shall provide coverage for abortions except when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical
 - The restrictions of this section shall not apply to the use of such funds for an abortion if the woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.
 - Transporting the patient across state lines is necessary to protect the life or health of the patient.
 - The administration of an anesthetic or analgesic would increase the risk to the woman's life or physical health.
3. More than one physician is needed to determine an exceptional case
- Two physicians certify in writing to the fact that, to a reasonable degree of medical certainty, the termination of pregnancy is necessary because to continue the pregnancy would unreasonably reduce the likelihood of successful treatment of a life-threatening disease of the pregnant woman; or (c) A physician certifies in writing that a medical emergency existed and another physician was not available for consultation prior to the time necessary to perform the termination of pregnancy. The physician's written certification must clearly describe the medical emergency.
 - In the event a medical emergency exists and a physician cannot comply with the requirements for informed consent, a physician may terminate a pregnancy if he or

she has obtained at least one corroborative medical opinion attesting to the medical necessity for emergency medical procedures and to the fact that, to a reasonable degree of medical certainty, the continuation of the pregnancy would threaten the life of the patient.

4. The method of abortion used to try to save the fetus could make the case exceptional by threatening a woman's health

- Unless, in the reasonable medical judgment of the physician, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the pregnant woman than would another available method.
- In cases where the method or technique of abortion most likely to preserve the life or health of the unborn child would present a greater risk to the life or health of the woman than another legally permitted and available method or technique, the physician may utilize such other method or technique.
- If the informed consent requirements of this Section have not been met due to medical emergency, the physician shall employ a method of terminating the pregnancy that gives the unborn child the greatest chance of survival consistent with protecting the life and physical health of the mother.

D. Certain Pregnancies are Exceptional: Rape or Incest

- When the pregnancy was the result of rape or incest.
- When the pregnancy is the result of an alleged act of rape or incest.
- In the case of rape, this information may be omitted
- The pregnancy is a result of spousal sexual assault as described in section 3128 (relating to spousal sexual assault), which has been reported to a law enforcement agency having the requisite jurisdiction.
- In 1993, after much debate in Congress, the Hyde Amendment was rewritten in a new format, and the exceptions were expanded beyond "the life of the mother" language to include cases of rape and incest.
- Does not apply if, at the time the woman schedules or arrives for her appointment to obtain an abortion, a copy of a restraining order, police report, medical record, or other court order or documentation is presented which provides evidence that the woman is obtaining the abortion because the woman is a victim of rape, incest, domestic violence, or human trafficking
- Such person or the physician may not perform the ultrasound if, at the time the woman schedules or arrives for her appointment to obtain an abortion, a copy of a restraining order, police report, medical record, or other court order or documentation is presented which provides evidence that the woman is obtaining the abortion because she is a victim of rape, incest, domestic violence, or human trafficking.
- I understand that I am required by law to hear an explanation of the sonogram images unless I certify in writing to one of the following: I am pregnant as a result of a sexual assault, incest or other violation of the Mississippi law that has been reported to law enforcement authorities or that has not been reported because I reasonably believe that doing so would put me at risk of retaliation resulting in serious bodily injury.

- The woman's pregnancy is a result of a sexual assault, incest or other violation of Mississippi law that has been reported to law enforcement authorities or that has not been reported because she has a reason that she declines to reveal because she reasonably believes that to do so would put her at risk of retaliation resulting in serious bodily injury;
- Monies deposited in the fund must be used to reimburse the expenses of an abortion performed in cases of rape, incest,
- Intercourse as defined in RCW 9A.44.010 and where the offense has been reported to a law enforcement agency within seven days from the time the offense occurred

E. Women are Passive Victims

- A female upon whom a partial-birth abortion is performed shall not be prosecuted under this subchapter.
- The woman subject to abortion
- Every woman submitting to an abortion
- A woman upon whom a sex selection or race selection abortion is performed shall be immune from civil or criminal liability for a violation of, or conspiracy to violate, this act.
- A woman upon whom an abortion has been performed may maintain a cause of action against the physician who performed the abortion
- "Victim of coerced abortion", the victim of the crime of coercing an abortion, whether or not the victim has reported the crime prior to seeking or obtaining an abortion.

Fetal Personhood

The fetal personhood frame was also subject to coding in my dataset. As such, below are the categories of the fetal personhood frame and the language from the actual bills that make up these categories. Most of this language centers on the idea of the fetus as a person or as a future person. The personification of the fetus includes language that attributes child-like attributes, features, activities, and survival outside the womb to the fetus.

I. Fetal Personhood General

A. Fetus has life/is a living person

- Unborn human life.
- Protect the unborn child
- The words 'person,' 'human being,' 'child,' and 'individual' include 1 every infant member of the species homo sapiens who is born alive at any stage of development.

- The Legislature of the people of the State of Florida finds that all life comes from the Creator and begins at conception.⁴⁵
- That human physical life begins when a human ovum is fertilized by a human sperm.
- The printed materials or informational video shall prominently display the following statement: "The State of Missouri wants you to know that the life of your unborn child began at conception, and that your unborn child has protectable interests in his or her life, health, and well-being."
- The legislature hereby finds and declares the following: (1) (2) The life of each human being begins at fertilization; should be protected; and (3) unborn children have interests in life, health and well-being
- This brand new being contains the original copy of a new individual's complete genetic code. Gender, eye color and other traits are determined at conception.

1. Abortion kills a person

- Involves the taking of human life.
- The abortion will terminate the life of a whole, separate, unique, living human being.
- "Abortion", the intentional destruction of the life of an embryo or fetus in his 3 4 or her mother's womb
- The protection of unborn human life is a compelling state interest.
- "Saline amniocentesis abortion" is a procedure whereby a saline solution is inserted into the amniotic sac for the purpose of killing the unborn child and artificially inducing labor.
- Personal liberty is not a license to kill an innocent life under any provision of the United States Constitution.
- Partial-Birth Abortion Ban Act
- That a partial-birth abortion confuses the medical, legal, and ethical duties of a physician to preserve and promote life. By performing a partial-birth abortion, the physician acts directly against his or her duties to preserve and promote the life of a child, whom he or she had just delivered, all but the head, out of the womb, in order to end that life.
- By aborting a child in the manner that purposefully seeks to kill the child after he or she has begun the process of birth, a partial-birth abortion procedure undermines the public's perception of the appropriate role of a physician during the delivery process and perverts a process during which life is brought into the world, in order to destroy a partially born child.
- Partial-birth abortion means an abortion procedure in which the person performing the abortion partially delivers vaginally a living unborn child before killing the unborn child and completing the delivery. For purposes of this subdivision, the term partially delivers vaginally a living unborn child before killing the unborn child means deliberately and intentionally delivering into the vagina a living unborn child,

⁴⁵ This particular statement about the "Creator" was one of the only references I saw distinctly pertaining to religion or spirituality. As I discuss in Chapter 2, in antiabortion discourse—as well as in certain pro-choice discourse—there is a religious framing of abortion. Ferree, et al (2002) show unequivocally that the religious framing of abortion is an active frame in the U.S. However, I do not find much evidence of it embedded in the bills themselves. I believe it is the nature of the bills themselves, and that if this study included newspaper articles, public speeches, or floor debates, I would find more religious rhetoric there.

or a substantial portion thereof, for the purpose of performing a procedure that the person performing such procedure knows will kill the unborn child and does kill the unborn child

- Intentionally causes the death of a living intact fetus while that living intact fetus is partially born

2. State must protect life

- The Legislature finds that once life begins the state has a compelling interest in protecting the natural course of its development from that moment through birth, as surely as after birth. Any act of a person detrimental to an unborn human life, when not necessary in defense of the life of the mother bearing such unborn life, which unnaturally terminates that life, is a deprivation of an unalienable right which the people have the sovereign discretion to protect through laws enacted by their respective legislatures.
- The State of Georgia has the duty to protect all innocent life from the moment of conception until natural death. We know that life begins at conception. After nearly four decades of legal human prenatal murder
- The act of prenatal murder is murder and conspiracy to commit murder per se; The act of prenatal murder has caused a significant reduction in the number of citizens in this state that would serve as workers, entrepreneurs, teachers, employees, and employers that would have significantly contributed to the prosperity and continuation of this state
- The General Assembly shall have full authority, by legislative action, to protect human life in this Commonwealth from the moment of fertilization until natural death without regard to age, health, or condition of dependency.
- The legislature further recognizes the need to limit abortions so that it becomes a rare and unnecessary procedure, and that the preservation of life is of paramount concern to the State. The purpose of this Act is to foster and develop a culture of life, rather than death by a gruesome means
- It is the strong public policy of this State to prefer, encourage and support childbirth over abortion

B. The fetus is viable, and a future person

- Post Viability Protection Act
- No physician shall intentionally, knowingly, or recklessly perform an abortion or terminate a pregnancy when: (1) the unborn child is viable; or (2) the unborn child has reached a gestational age of 24 weeks or greater.
- Before performing an abortion, a physician shall determine, to a reasonable degree of certainty, whether the fetus is viable.
- Whether there is any possibility of the fetus surviving outside the womb.
- Help them maintain their relationship with their unborn children
- That the pregnant mother has a commitment to the pregnancy or prefers to carry the child to term

C. The fetus feels pain

- Pain-Capable Unborn Child Protection Act.
- Viable and Pain-Capable Unborn Child Protection Act
- Abortion Pain Prevention Act
- Preborn Pain Act
- Take measures to protect an unborn child from suffering pain needlessly during an abortion
- When a facility provides abortions, it is responsible for ensuring that anesthesia is administered to an unborn fetus who is aborted if it is older than seven weeks. The kind of anesthesia used, and the method of administering the anesthesia, shall conform to medical standards used in fetal surgery
- Scientific evidence explaining how an unborn child experiences and responds to pain; (B) anesthesia available to reduce pain to the unborn child before an abortion is performed; (C) all risks to the pregnant woman and to the unborn child of administering anesthesia.
- Pain receptors known as nociceptors are present throughout the unborn child's entire body by no later than sixteen (16) weeks after fertilization, and nerves link these receptors to the brain's thalamus and subcortical plate by no later than twenty (20) weeks; (2)(A) By eight (8) weeks after fertilization, the unborn child reacts to touch.
- By 20 weeks after fertilization, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example, by recoiling; (c) in the unborn child, application of such painful stimuli is associated with significant increases in stress hormones known as the stress response; (d) subjection to such painful stimuli is associated with long-term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral and learning disabilities later in life
- Subjection to such painful stimuli is associated with long-term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral, and learning disabilities later in life;
- Finally, there is substantial and well-documented medical evidence that an unborn child by at least twenty (20) weeks gestation has the capacity to feel pain during an abortion
- By 20 weeks gestational age, an unborn child (A) possess all anatomical links in the unborn child's nervous system that are necessary for feeling pain; (B) is capable of experiencing pain; (2) a description of the actual steps in the abortion procedure to be performed or induced and the steps in which the unborn child is capable of feeling pain; and (3) a statement that maternal anesthesia typically offers little pain prevention for the unborn child and that an anesthetic or analgesic is available to minimize or alleviate pain to the fetus.

D. The fetus has features, organs, and a heart tone like a born baby that are visible through ultrasound

- The display of a realtime view of the unborn child and heart tone monitoring
- Provide a simultaneous explanation of what the ultrasound is depicting;

- Including a medical description of the dimensions of the embryo or fetus, the presence of cardiac activity, and the presence of arms, legs, external members and internal organs
- The department of health services maintains a website that describes the unborn child
- The pictures or drawings must contain the dimensions of the unborn child and must be realistic and appropriate for each stage of pregnancy.
- In addition, the video shall show ultrasound images, using the best available ultrasound technology, of a fetus at two-week gestational increments.
- No person performing a termination of pregnancy after viability shall knowingly or intentionally harm or damage the brain, spinal cord, heart, lungs, or other vital organs of the unborn child, nor knowingly or intentionally cause the unborn child to be dismembered or poisoned, except in cases of medical emergency.

1. Development of the fetus is rapid and it becomes child-like at early stages

- Most significant developmental milestones occur long before birth during the first eight weeks following fertilization when most body parts and all body systems appear and begin to function. The main divisions of the body, such as the head, chest, abdomen, pelvis, arms and legs are established by about four weeks after fertilization. Eight weeks after fertilization, except for the small size, the developing human's overall appearance and many internal structures closely resemble the newborn. Pregnancy is not just a time for growing all the parts of the body. It is also a time of preparation for survival after birth. Starting more than 30 weeks before birth, many common daily activities seen in children and adults begin in the womb. These activities include, but are not limited to, hiccups, touching the face, breathing motions, urination, right- or lefthandedness, thumb-sucking, swallowing, yawning, jaw movement, reflexes, REM sleep, hearing, taste and sensation.

2. Presence of a heartbeat makes the fetus more likely to survive

- Arkansas Human Heartbeat Protection Act
- Heartbeat Informed Consent Act
- Less than five percent (5%) of all natural pregnancies end in spontaneous miscarriage after detection of fetal cardiac activity; (3) Over ninety percent (90%) of in vitro pregnancies survive
- If a fetal heartbeat is detected, the person performing the intended abortion shall inform the pregnant woman in writing no later than twenty-four (24) hours before the performance of the intended abortion: (1) That the unborn human individual that the pregnant woman is carrying possesses a heartbeat; and (2) Of the statistical probability of bringing the unborn human individual to term based on the gestational age of the unborn human individual possessing a detectible heartbeat.
- The dimensions of the unborn child; and (B) if present and viewable, the presence in the unborn child of (i) cardiac activity; (ii) external members; and (iii) internal organs.

3. Gestational age is important as a marker of how child-like (both for physical features and viability) a fetus is

- The probable anatomical and physiological characteristics of the fetus at the time the abortion is performed
- In order to determine the gestational age of the unborn child the doctor must use ultrasound equipment preparatory to the performance of an abortion.
- Information that is designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from fertilization to full term, including pictures or drawings representing the development of unborn children at two-week gestational increments and any relevant information on the possibility of the unborn child's survival.
- The medical reasons for the determination of the gestational age of the fetus shall also be reported by the physician

E. The fetus can survive an abortion

- Born Alive Infant Protection Act.
- When an abortion upon a woman whose unborn child has been determined under subdivision (a)(1) of this section to have a probable postfertilization age of twenty (20) or more weeks is not prohibited by this section, the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive.
- An infant born alive during or immediately after an attempted abortion is entitled to the same rights, powers, and privileges as are granted by the laws of this state to any other child born alive in the course of natural birth.
- Malformations or other birth defects can occur in a child who survives an attempted abortion and is born alive after the administration of RU-486 (mifepristone) or other drugs.
- So long as the physician takes every medically reasonable step, consistent with such procedure, to preserve the life and health of the infant.

F. The fetus is discriminated against/rights are being violated

- Equal Opportunity for Life Act"
- The right to life is the paramount right of a person. The right to life is a more fundamental right of a preborn child than the mother's right to liberty or pursuit of happiness, which does not include the right to kill other people. In no way does a child's right to life interfere with a mother's right to life.
- Abortion Ban for Sex Selection and Genetic Abnormalities Act of 2012
- The purpose of this act is to protect unborn children from prenatal discrimination in the form of being subjected to an abortion based on the child's sex
- Failure to protect unborn children of certain segments of the State's population because those unborn children are of a sex or racial makeup that is disfavored by some segments of society; and p. Sex selection and race selection abortions trivialize the value of the unborn on the basis of sex and race, by reinforcing sex and race discrimination and coarsening society to the humanity of all vulnerable and innocent human life, making it increasingly difficult to protect such life; thus, the Legislature

has a compelling interest in acting to prohibit sex selection and race selection abortions

Appendix B – Full Description of Regulatory Abortion Bill Types

Ultrasound Mandates

These bills mandate ultrasounds before abortion. The ultrasound could be performed via abdominal or vaginal transducer, the later being a much more invasive procedure. The ultrasound provisions often include language suggesting that the ultrasound being performed will help aid in a woman's informed decision-making, or that it was to her benefit, as the doctor might not suggest she have one, or allow her to see the ultrasound performed to locate the fetus in the womb. When the bills discussed doctors not "allowing" women to see the ultrasound, this was coded as "protective." The thought behind this was that by situating doctors as inherently negligent at best, malevolent at worst, women would need the state's protection. Ultrasound provisions are also rife with empowerment language in that they often call to the woman's "right" to see. Some of the bills contain this quasi-feminist language in the very title. Alabama House bill 418 (2012) introduced by Republican Representative April Weaver is an ultrasound bill entitled, "Right to Know and See Act." In this bill, women are given the right to view the mandated ultrasound, doctors required to display the screen in the woman's "line of vision." Some ultrasound bills mandate the ultrasound, while others prescribe the right to ask for one.

Informed Consent

Similar to other medical informed consent that one would receive before surgery, these bills mandate doctors to describe the procedure that would take place. Dissimilar to other types of informed consent, these bills include mandated scripts that doctors must read to their patients, waiting periods anywhere from one hour to 72 hours, state-

produced booklets that must be given to patients on making a decision about abortion, medically inaccurate descriptions of the fetus in two-week increments, and medically inaccurate information about the risks of abortion (Daniels, et al., 2016; Lee, et al., 2005). Like the ultrasound bills, informed consent bills purport to focus on providing more information for women to consider before abortion. They use all three major elements of the pro-woman frame: empowerment, ignorance, and protectionism. New Hampshire House bill 483 (2013), entitled “Abortion Information Act” provides a good example of how these three frames function in one bill, and why ultimately I decided to lump them together as the pro-woman frame instead of their unique components.

Insurance Opt-Out

Insurance bills are quite salient during the time period in this database as political activity on the federal level spurred activity in the states: the passage of the Affordable Care Act. Due to this federal law’s negotiated provision that states could “opt out” of the law’s abortion coverage through the state exchanges, states frequently introduced bills regarding the state’s desire to opt out. Considering the intervening event of the passage of the Affordable Care Act, it was expected that bills responding to the “opt out” provision would be over-represented.

Targeted Regulation of Abortion Providers (TRAP)

Made famous nationally by state senator Wendy Davis’ filibuster in the Texas State Senate in 2013, TRAP laws are a relatively new phenomenon among abortion regulations. These laws focus on regulating abortion providers by way of requiring they have admitting privileges at a nearby hospital and mandating that they live in the state in which they practice. Such laws also regulate the abortion facilities or clinics, requiring

that they conform to the same standards of ambulatory surgical centers. This could mean making a variety of structural changes, such as widening the hallways to fit stretchers, or adding broom closets. It also includes requiring the purchase of expensive medical equipment, which may or may not actually be useful in carrying out abortion procedures. In most cases, these regulations pose significant financial strain on clinics and providers, in the case of Texas, leading to closures of statewide facilities moving Texas from 40 to 10 clinics.⁴⁶ However, high profile stories of abortion providers engaged in gruesome back-alley practices helps provide the socio-political gravitas for introducing such bills. One such example was the case of Philadelphia abortion provider Kermit Gosnell, whose clinic was cited for substandard health violations, and following the death of a patient, had his medical license suspended in 2010. Gosnell went to trial for involuntary manslaughter of his patient, as well as the death of four infants said to have been born during late term abortions. While horrifying, Gosnell's practices were more reminiscent of abortion practices of the pre-*Roe* days, when abortion was criminalized across a wide swath of the US, and available only to women who could afford the discretion of a private doctor to provide "therapeutic" abortion. Nonetheless, the fact that Gosnell could operate for decades, avoiding a regular clinic inspection, is telling of the potential of unregulated, dangerous clinics.

Gestational Bans and Fetal Pain

Bills that ban abortion based on gestation can vary widely throughout the states. As per *Roe*, states can legally ban abortion during the third trimester, as long as they provide exceptions for the health and life of the mother. The subsequent landmark

⁴⁶ <https://www.texastribune.org/2016/06/28/texas-abortion-clinics-have-closed-hb2-passed-2013/>

Supreme Court decision of *Planned Parenthood v. Casey* (1992) allowed states to regulate abortion with exceptions for the life and health of the mother post-viability. Viability being a messy and often inaccurate “point” from which to measure, states tend to declare viability around 24 weeks gestation. These bans, however, go beyond the *Casey* framework, including banning abortion upon viability, or certain gestational weeks. The bans can range, but most often hover around 20-24 weeks gestation. This time period is purposeful and connected to another type of bill – fetal pain bills. Though not in all cases, these two bills occur together as the fetal pain bills set out findings that the fetus can feel pain at a certain gestational age, and the gestational ban would then ban abortion after that time. However, they can and do occur on their own.

When they do, fetal pain bills purport that the fetus can feel pain at a particular gestational age, and codifies that into law, often writing it into informed consent materials and scripts. Fetal pain bills are, like informed consent, often controversial as they are largely buttressed by research that has not had the full support of the medical community. In fact, there is still significant scientific debate as to when a fetus can feel pain, if at all. Fetal pain bills often cite a study on fetal anesthesia by Dr. Mark Rosen, and a study of 5 children with hydrancephaly, conducted by Swedish neuroscientist Dr. Bjorn Merker.⁴⁷ In this study, Dr. Merker questions whether the cortex is the “organ of consciousness” as with the 5 children, they seemed to “smile and cry” despite having no cortex, or a fluid filled cortex. Dr. Merker has since stated that his study was not about

47 http://www.nytimes.com/2013/09/17/health/complex-science-at-issue-in-politics-of-fetal-pain.html?_r=0

and,

http://www.slate.com/articles/health_and_science/human_nature/2013/09/fetal_pain_studies_research_doesn_t_support_abortion_bans_at_20_weeks.html

pain. Dr. Rosen has since reiterated that fetal pain is unlikely before 27 weeks, or the third trimester. Both the American College of Obstetricians and Gynecologists and the British Royal College of Obstetricians and Gynaecologists reject the idea that a fetus can feel pain as early as 20 weeks.

Funding

Funding bills are anything, outside of the Affordable Care Act, that regulated the funding of abortion. These most commonly focused on abortions not being funded by the state in any way, restricting state agencies to contract with any place that performs abortion, rejecting funding abortions where there is a fetal abnormality, or prohibiting the funding of abortions through any kind of state healthcare program such as Medicaid. These regulations are most often framed as being a taxpayer issue wherein the tax paying residents of the state should not be expected to pay for or subsidize any abortion. In New Hampshire, Oklahoma, and Pennsylvania, these bills are often referred to as the “Whole Woman's Health Funding Priorities Act.” Funding of abortion has been federally banned under the Hyde Amendment since 1976, nevertheless, states can opt to allow Medicare funds to be used to cover the costs of abortion. According to the Guttmacher Institute, currently 17 states allow Medicaid to cover medically necessary abortions, 13 doing so pursuant to a court order, and 4 doing so on a voluntary basis.⁴⁸

Sex/Race/Ability Selection Bans

A relatively new addition to abortion regulations across states, these bans would prohibit abortion if it is believed that the woman is seeking the abortion based on the sex, race, or because of the presence of a disability of the fetus. As sex selection is a custom

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

that occurs, unfortunately, in several countries globally, these bills acknowledge this practice and seek to put an end to it in the US, despite a lack of evidence that it is even practiced in the US. The bills often include language rooted in non-discrimination: that women are valued members of society who have strived for equality for decades. In the words of Florida's HB 1327 (2012), sponsored by a Republican state Representative Scott Plakon:

Women, once subjected to sex discrimination that denied them the right to vote, now have suffrage guaranteed by the Nineteenth Amendment to the United States Constitution. African-Americans, once subjected to race discrimination through slavery that denied them equal protection of the laws, now have that right guaranteed by the Fourteenth Amendment to the United States Constitution. The elimination of discriminatory practices has been and is among the highest priorities and greatest achievements of American history, and WHEREAS, implicitly approving the discriminatory practices of sex-selection abortion and race-selection abortion by choosing not to prohibit them will reinforce these inherently discriminatory practices, and evidence a failure to protect a segment of certain unborn Americans because those unborn are of a sex or racial makeup that is disfavored

This is a compelling approach to frame an abortion regulation. It is at once situating a feminist standpoint, but applying it to the fetus—a would-be woman. The optics of fetal personification and futurity are distinctly on display here. Similarly to sex, these bills include bans on race and disability. Again, it is unclear as to whether this is a widespread problem in the US. However, the frames used cannot be ignored. The Florida bill quoted above leans in heavily to a feminist and anti-racist frame by being titled the “Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination and Equal Opportunity for Life Act.”

Late Term Bans

The case of *Gonzales v. Carhart* (2007) effectively put an end to a certain type of late term abortion procedure known as dilation and extraction or D&X (sometimes also called intact dilation and evacuation, or intact D&E). Though it was a relatively safe procedure as far as late term procedures go, the optics of an intact fetus riled the active antiabortion movement, and they began using the term “partial birth” abortion. The alternative to a D&X procedure was, then the dilation and evacuation or D&E procedure, which includes completing a late term abortion in several passes, instead of one. Again, the image of fetal tissue “pieces” is a gruesome and troubling one for many, and thus in using the same terminology to indicate that these procedures apply to late term abortions, “partial-birth” abortion bills were created. It is worthwhile to note that few abortions occur late term. As mentioned above, bans on abortion exist for different gestational weeks pre- and post-viability in states. These bills, however seek to regulate the method of abortion used during late term abortions where they do exist.

Medication Bans

Another type of ban on the method of abortion is medication bans. As non-surgical abortion became possible and accessible around 2000⁴⁹, via mifepristone and misoprostol, states sought to regulate the way women accessed and were prescribed abortion medication. Due to the fact that the woman would administer the medication herself, doctors have been able to participate in telemedicine, or prescribing the medication via telecommunication or videoconference. This is of particular importance to women living in rural areas who cannot travel to the closest abortion clinic—which in

49 <https://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm111334.htm>

some states can be up to 100 miles or more away—but can get counseling and an ultrasound by a nurse and be prescribed the medication by telecommunication.

This type of abortion is useful also to abortion practitioners who travel in to a state to perform abortions, and may only be able to conduct a follow-up visit, but not the initial visit. As such, these bills regulate the way in which medication abortion is prescribed, administered, or ban telemedicine altogether. In some cases, the doctor must be forced to comply with outdated⁵⁰ federal regulations that would require a higher dosage of medication, leading to increased discomfort of the patient. The doctor would also have to read and give the woman the FDA guidelines on the medication. Many of the bills require the woman to return for one or more follow-up visits for further examination by a doctor, or require the doctor to make earnest attempts to follow-up. Other bills in this category ban telemedicine and require that medication abortion be prescribed in-person only.

Conscience Clauses

Conscience clauses are bills that focused mainly on protecting the religious and moral convictions of healthcare professionals. In these bills, healthcare professionals are given the opportunity to refuse to participate in abortion in any way. These bills, though often short, use language that suggests protecting healthcare providers in their personal, perhaps religiously based, feelings about abortion. Provisions such as these are the early precursory legislation that sets the stage for such laws as the religious exemption for companies and organizations for providing birth control coverage under the Affordable Care Act.

⁵⁰ As of the time of writing this dissertation, the FDA guidelines around administration of medication abortion were updated. However, at the time of researching, and at the time the bills were introduced, the guidelines were outdated.

Anti-Coercion Clauses

Another new type of regulation is the anti-coercion clause. These are rooted in feminist, victim-friendly language and include provisions such as pre-screening to ensure the patient is not being coerced into an abortion, being read statements about coercion, or signing statements to the effect there is no coercion involved in deciding to get an abortion. These bills also often include a requirement that signage be hung in the clinic waiting room that reads a specific statement about coercion. Here is an example of that signage from Minnesota SF 1989:

"Notice: No one can force you to have an abortion. It is against the law for a spouse, boyfriend, parent, friend, medical care provider, or any other person, regardless of that person's relationship to you, to force you to have an abortion. By law we cannot perform, induce, prescribe for, or provide you with the means for an abortion unless we have your freely given and voluntary consent. You have the right to contact any local or state law enforcement agency to receive protection from any actual or threatened physical injury, abuse, or violence. Private access to a telephone and information about safe transportation and services available to help will be provided to you upon request."

This particular bill, similar to many like it, also include incredibly detailed instructions such as "...The sign must be at least 11 inches by 17 inches and printed with lettering that is legible, in at least 44-point type, and at least one-quarter inch in size."

Interestingly, the anti-coercion provisions only apply to making sure the woman is not being coerced *into* having an abortion. It is completely legal for a state to indicate and include in informed consent materials, or state health websites that the state prefers childbirth to abortion. However, in screening for coercion, these bills often mimic victim advocacy groups calling to mind tactics and rhetoric used by anti-domestic violence advocates.

Heartbeat Bans

Similar to gestational bans, heartbeat bans are regulations that would disallow abortion after the point at which a fetal heart tone can be heard via a monitor. This can be as early as 6-8 weeks. These bills are also quite controversial due to their inherent unconstitutional nature. One Ohio bill, HB248 (2013), was quite famous in the news media for being one of the most restrictive bills regarding abortion policy, banning abortion at just 6 weeks. That bill died in the house, but was a reminder that Ohio had once attempted to pass such a bill before, and would be likely to try again in the future.⁵¹

Complete Bans

States often push the boundaries of legality around abortion, as evidenced above. The strategy, according to some pro-choice movement actors, is to pass a facially unconstitutional law so to be immediately challenged in the courts, with the hope of making it to the Supreme Court and thus challenging *Roe* itself. As seen in gestational bans, fetal pain bills, and heartbeat bills, the strategy seems to work in part, as many of these bills, if passed, become enjoined by lower courts. Complete bans are unconstitutional complete and total criminalization of abortion statewide. Again, the reasoning is that *Roe* was decided in error and should be overturned. As seen in Chart A, there were only 11 such bills, some occurring multiple times in one state.

⁵¹ Ohio did, in fact, introduce another heartbeat bill (HB493) in 2016, which banned abortion after a heartbeat could be detected, or around 6 weeks gestation. The bill was passed through both houses but vetoed by Republican Governor and presidential hopeful John Kasich. Gov. Kasich also signed into law a 20 week ban on the same day he vetoed the heartbeat bill.

Other

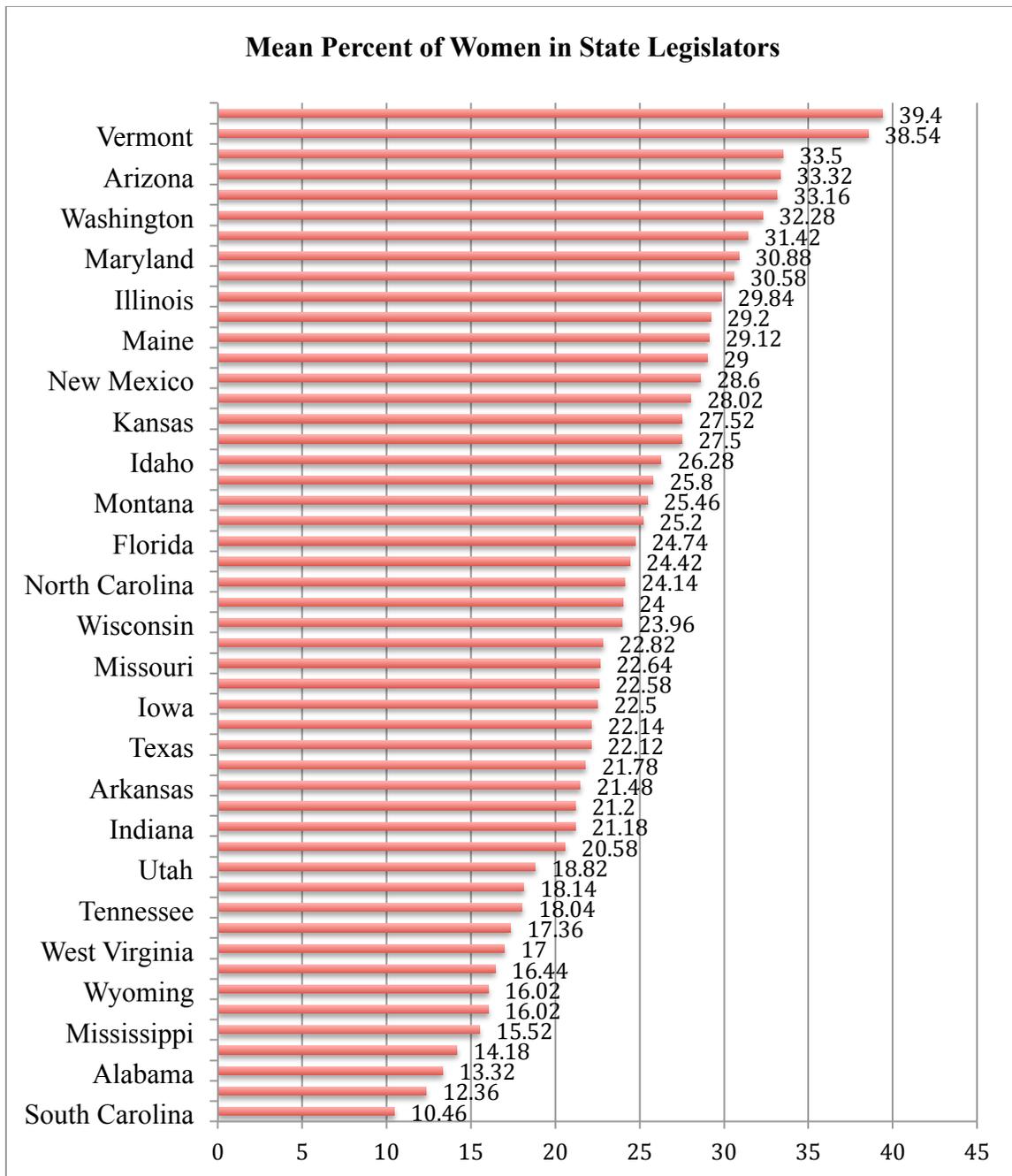
An “other” category was useful to collect any bill that did not fit neatly into any of the above provisions. These bills often included redefinitions, such as redefining life to be at conception, or redefining “bodily harm” for the purposes of creating exceptions.

Appendix C – Percent of Women in State Legislatures During Time of Study

State	Mean Percent*
Colorado	39.4
Vermont	38.54
Minnesota	33.5
Arizona	33.32
Hawaii	33.16
Washington	32.28
New Hampshire	31.42
Maryland	30.88
Connecticut	30.58
Illinois	29.84
Nevada	29.2
Maine	29.12
New Jersey	29
New Mexico	28.6
Oregon	28.02
Kansas	27.52
California	27.5
Idaho	26.28
Delaware	25.8
Montana	25.46
Massachusetts	25.2
Florida	24.74
Rhode Island	24.42
North Carolina	24.14
Alaska	24
Wisconsin	23.96
New York	22.82
Missouri	22.64
Ohio	22.58
Iowa	22.5
Michigan	22.14
Texas	22.12
Georgia	21.78
Arkansas	21.48
Nebraska	21.2
Indiana	21.18
South Dakota	20.58
Utah	18.82
Virginia	18.14
Tennessee	18.04
Kentucky	17.36

West Virginia	17
Pennsylvania	16.44
North Dakota	16.02
Wyoming	16.02
Mississippi	15.52
Louisiana	14.18
Alabama	13.32
Oklahoma	12.36
South Carolina	10.46

* Mean Percent is based on the years included in this study: 2009-2013.



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