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Late-term Abortions

Medical Perspective On Late-Term Abortions

Late-term abortion occurs during the third trimester of pregnancy around the 27th week of gestation. Two different techniques are used for this abortion procedure. Intact Dilation and Extraction (partial birth) removes the fetus from the uterus through the vaginal canal and creates a suction to remove the brain and spinal fluid from the skull. "The American Medical Association recommends that intact dilatation and extraction procedure not be used unless alternative procedures pose a greater risk to the woman and that abortions not be performed in the third trimester except in cases of serious fetal anomalies incompatible with life" (Epner 1998). However, this abortion procedure may minimize the trauma to the woman's uterus, cervix, and other organs (Epner 1998).

Dilation and Extraction (D&X) is another late-term method. The Doctor dismembers the fetal part that has been brought out of the vagina and removes it. The rest of the fetus remains in the uterus while dismemberment occurs. There is "wide disagreement within the medical community, and little data on whether the procedure (D&X) is safer than others or even whether it should be performed" (Grimes, David 1998 pg. 3).

Bleeding, reactions to anesthesia, and cervical injuries are all risks that must be considered with these abortion procedures. Abortion related mortality statistics show 16.7 deaths per 100,000 procedures (Epner 1998 pg. 1).

Actions Of Other States

Thirty-Three states have attempted to ban late-term abortions (see Figure 1). Only 12 of these states have succeeded. In 18 states, there are court injunctions against enforcing the proposed law, and in three states, the legislation is pending (Kaplan, 1999). The states that have succeeded in banning late-term abortions have all allowed that the procedure be done when the life of the woman is in danger (Miles 1999). Most of the 18 states with the injunctions have attempted to ban all late-term abortions, including those done to save the life of the woman, as well as those done as a result of rape (Kaplan, 1999).

In some states, even allowing the procedure to occur to save the life of the woman is not enough to get the proposal to pass. The Ohio proposal, for example, would make performing a late-term abortion a felony punishable by a fine and up to two years in prison for a physician to employ the procedure unless it is "necessary to save the life of a mother whose life is endangered by physical disorder, illness or injury." The woman would not be subject to prosecution. A Federal judge put an injunction against the Ohio ban on late-term abortions because he felt that it inhibited a woman's right to choose to have an abortion, although it did allow her to have a late-term abortion if her life was in danger (Akron Beacon Journal 2000).

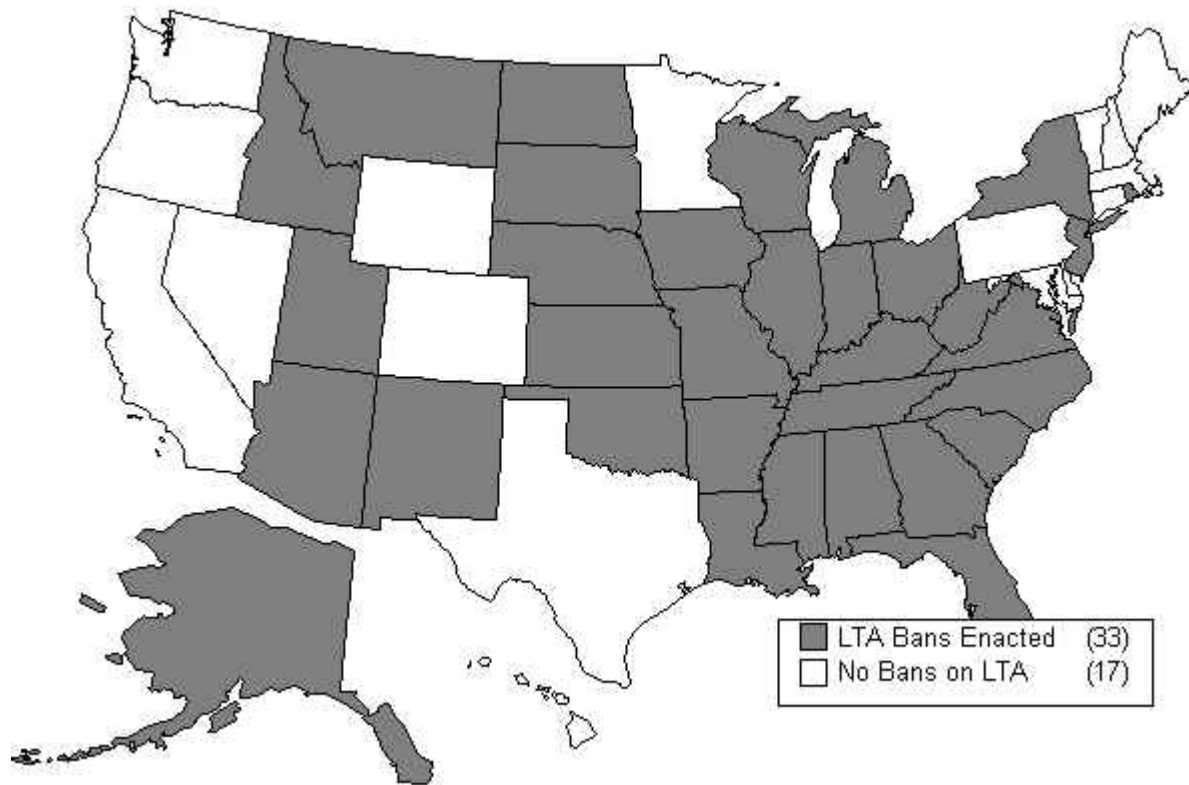


Figure 1: Late-term abortion bans

Constitutionality Of Late-Term Abortions

- In general, current Supreme Court rulings allow the individual states to regulate abortion in the following ways:
- Banning elective abortions after viability;
- Requiring parental consent or notice before a minor can obtain an abortion (although, usually, a "judicial bypass option must be made available)'
- Requiring waiting periods before an abortion may be performed (usually 23-48 hours);
- Requiring informed consent or counseling be obtained before an abortion (States often mandate what information must be presented);
- And, Requiring certain kinds of record keeping (Abortion Law Homepage).

Thirty-three states have acted to ban partial-birth abortions in particular (Fig. 1). While these statutes contain maternal "life" exceptions, they generally do not include a maternal "health" exception. That is to say, that, in general, the statutes allow for partial birth abortion only when the mother's life is in danger, not her health in general (Abortion Law Homepage, 3/3/2000).

On January 14, 2000, the U.S. Supreme Court agreed to hear *Stenberg v. Carhart*, 120 S.Ct. 2597, 68 USLW 4702 (2000), a case regarding the constitutionality of a Nebraska statute banning partial-birth abortion. The statute in question criminalized the performance of partial-birth abortions unless "such procedure is necessary to save the life of the mother 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"(Center For Public Health Law).

On June 28, 2000, after reviewing the Nebraska statute, the Supreme Court declared it unconstitutional for two reasons. First, the court concluded that the statute failed because it did not include an exception for the health of the mother. The court further determined the stature to be unconstitutional because its definition of partial-birth

abortion was vague and over broad, and did not depend on the court's detailed recitation of the clinical aspects of abortion (Center For Public Health Law).

The decision by the U.S. Supreme Court on June 28, 2000 in *Carhart* has broad implications for states considering legislating late-term abortion, as the statute in question was similar to most of the laws adopted by other states. It is widely believed after the court's findings in *Carhart* that subsequent court challenges to other states' bans on late-term abortion will result in these bans being overturned.

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