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ABORTION
FEDERATION

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State Legislative Report 2004

Overview

In 2004, forty-four state legislatures across the country considered over 500 anti-choice bills. These included over 300 bills filed throughout the year and approximately 200 anti-choice bills that carried over in twenty-five states from the 2003 legislative session. Six states had no regular 2004 legislative session: Arkansas, Montana, North Dakota, Nevada, Oregon and Texas.

The most common types of proposed abortion restrictions included abortion bans, biased counseling bills, parental involvement bills, bills restricting public funding of abortion, and TRAP bills, described in more detail later in the report.¹

Twenty bills restricting abortion services or abortion funding were signed into law in 2004 (or have become law over a governor's veto). Three of those are currently not enforced due to constitutional challenges. Additionally, three bills supporting abortion rights or protecting health care workers were enacted.

Election Wrap-Up

The 2004 elections had a significant impact on state legislatures and leadership. There were governor's races in eleven states: Delaware, Indiana, Missouri, Montana, New Hampshire, North Carolina, North Dakota, Utah, Vermont, Washington, and West Virginia. Over 80% of the state legislative seats were up for election across the country, and the outcome of the state elections will be critical for reproductive health care issues.

Pro-choice incumbent governors were reelected in both Delaware and North Carolina, and pro-choice governors replaced anti-choice governors in Montana and New Hampshire. Washington also elected a new pro-choice governor.² However, anti-choice governors replaced pro-choice governors in Indiana, Missouri, and West Virginia. The anti-choice governor was reelected in North Dakota, and Utah elected a new governor who is anti-choice. Vermont reelected a governor with a mixed record on choice.³ Across the country, there are now 21 pro-choice governors, 22 anti-choice governors, and 6 governors with a mixed record on choice.

¹ Note: while there are other types of bills hostile to family planning and reproductive rights, the only bills tracked in this report are those specific to abortion access or restrictions, e.g. in the form of bans, parental involvement bills, medical abortion bills, and a limited category of public funding limitations on abortions.

² The outcome of the Washington governor's race has been challenged in court.

³ For more election information, please visit the "State Election Wrap-Up" on our website at www.prochoice.org.

Pro-choice legislators made small but important gains in state houses across the country. For the first time in Massachusetts history, pro-choice legislators gained a majority in the House. Pro-choice legislators in North Carolina took control of the House and maintained their control of the Senate. In Oregon, pro-choice legislators took control of the Senate and added seats to their minority in the House.

At the beginning of the 2005 legislative session, Democrats held a majority in both legislative houses in nineteen states, Republicans held a majority in both houses in twenty states, and ten states have legislatures that are split between the two parties.

Anti-Choice Legislation In 2004

Abortion Bans

State bills that impose broad bans on abortion come in several different forms. In recent years, bans on safe abortion procedures have been introduced across the country, mirroring the federal abortion ban passed by the United States Congress. Although the federal abortion ban was found unconstitutional by three different federal judges in 2004,⁴ states continued to introduce this type of legislation.

In 2004, other broad abortion bans were also introduced in state legislatures, including: complete bans, bills banning abortion early in pregnancy, and bills prohibiting abortion under a variety of circumstances.

Proposed Bills:

In 2004, **seventeen states** introduced or carried over abortion bans from 2003:

GA	KS	MI	NH	SD	WA
HI	KY	MN	NJ	UT	WV
IN	MA	MS	NY	VT	

The **South Dakota** legislature passed a broadly worded bill that would have banned abortion in that state. Governor Michael Rounds (R) vetoed the bill for technical reasons, and the Senate failed by one vote to override the veto. The bill will likely be reintroduced in the 2005 legislative session.

Enacted Bills:

Michigan and Utah were the only states in 2004 to enact broad abortion ban bills. Although Michigan Governor Jennifer Granholm (D) vetoed an abortion ban passed by the Michigan

⁴ *NAF v. Ashcroft*, 330 F. Supp. 2d 436 (S.D.N.Y. 2004); *Carhart v. Ashcroft*, 331 F. Supp. 2d 805 (Neb. 2004); *PPFA v. Ashcroft*, 320 F. Supp. 2d 957 (N.D. Cal. 2004).

legislature, the veto was overridden. Michigan's Right to Life chapter initiated a campaign to override the veto through a citizen ballot drive, and they were able to gather enough signatures to bring the bill back to the Michigan legislature. Both the Senate and House approved the returned bill. The bill contains definitions that could result in the banning of safe abortion procedures, and does not provide adequate exceptions for the health or life of the woman. It will likely be challenged in court before it goes into effect in March 2005.

Utah's bill amended a previously passed abortion ban to eliminate the health exceptions. The bill was immediately challenged in court, and the state agreed not to enforce it while the lawsuit is pending.⁵

Biased Counseling And Waiting Period Bills

Biased counseling legislation requires abortion providers to give their patients information dictated by the state, often in the form of a mandated script. Most of these bills single out abortion and do not require specific information about the risks of pregnancy and childbirth. In some instances, state materials have required abortion providers to give misleading information to women.

Misleadingly titled "Women's Right To Know" or "informed consent" bills by their anti-choice sponsors, biased counseling legislation is often accompanied by waiting period requirements. As a result of these laws, women may be required to stay overnight away from home and arrange for childcare or time off from work. Such delays disproportionately affect low-income women and women who live in rural areas.⁶

Proposed Bills:

In 2004, **twenty-six states** introduced biased counseling and/or waiting period bills or carried over bills from 2003:

AK	GA	IL	MO	NY	TN	WI
AZ	HI	IN	NC	OK	VA	WV
CA	IA	MA	NH	RI	VT	
CO	ID	MN	NJ	SC	WA	

These bills included a 72-hour waiting period in **Colorado**, and a number of bills which required that women be given the opportunity to see an ultrasound or listen to fetal heart tones before receiving an abortion. **Idaho** and **South Carolina** introduced amendments to existing biased counseling bills to provide stronger civil penalties for clinics and physicians. **Arizona**'s bill, which contained biased counseling requirements and a 24-hour waiting period, passed the legislature but was vetoed by pro-choice Governor Janet Napolitano. **Minnesota**, however, proposed amendments to their existing biased counseling bill to remove a requirement that women be informed of the

⁵ *Utah Women's Clinic v. Walker*, See http://www.crlp.org/pr_04_0506utahpba.html.

⁶ In 2000, 87% of counties in the U.S. had no abortion provider, and that percentage rose to 97% with no abortion provider for nonmetropolitan counties in 1999. Source: Finer, Lawrence B. & Stanley K. Henshaw, "Abortion Incidence and Services in the United States in 2000," *Perspectives on Sexual and Reproductive Health*, 2003, 35(1):11.

alleged link between abortion and an increased risk of breast cancer, and that they be provided with medically accurate information.

Enacted Bills:

Alaska was the only state that enacted a biased counseling bill, requiring the state to create an “informed consent” website containing abortion information. Once the website is completed, women seeking abortions will need to certify in writing that they received the information from the site or were provided with other comparable information before an abortion.

Minors’ Access Bills

In 2004, state legislators continued to file a variety of parental involvement bills and bills impeding minors’ access to care. The most common were parental consent or notification bills, and amendments to current laws creating stricter standards (e.g., by adding notarization requirements, changing the standard from notice to consent, or making the bypass system more onerous). Several states also introduced bills imposing restrictions on a minor’s ability to leave the state to obtain an abortion. Forty-four states already have some type of parental involvement law on the books, and thirty-two of these laws are currently being enforced.

Proposed Bills:

In 2004, **nineteen states** introduced minors’ access bills or carried over bills from 2003:

CO	IA	MI	NJ	WA
FL	KS	MO	NY	WI
GA	MA	NC	OK	WV
HI	MD	NE	VT	

These included a bill in **Georgia** that would amend the current parental notification law to require the parent to provide identification in person, and bills in three states (**CO, IA, and WV**) that would impose additional restrictions than current law by requiring parental consent. **Michigan** Governor Granholm vetoed legislation that would have increased the burdens on a minor seeking a judicial bypass for an abortion. In **California**, individual proponents as well as the conservative group Responsible Citizens have begun to gather signatures for a proposed parental notification ballot initiative. The petition must garner 598,105 signatures in order to appear on the June 2006 ballot.

Enacted Bills:

Nebraska and Florida were the only states that passed minors’ access bills in 2004. **Nebraska** repealed a law requiring that schools tell students about judicial bypass provisions to the state’s parental involvement law.

The **Florida** legislature passed a resolution that put an initiative on the November election ballot to amend the state constitution, allowing the legislature to enact parental involvement laws. The Florida Supreme Court had previously ruled that such laws were unconstitutional under the Florida constitution. The ballot initiative passed with 65% of the vote, allowing the Florida legislature to consider parental involvement laws again in the upcoming 2005 session.

Targeted Regulation of Abortion Provider Bills

Targeted Regulation of Abortion Provider (TRAP) bills single out abortion clinics for medically unnecessary and restrictive regulations not imposed on comparable facilities. Once enacted, TRAP laws can over-regulate providers to the point that it can become difficult or even impossible for providers to continue to offer abortion care. The bills often include various structural, staffing, and licensing requirements only for abortion clinics, or redefine outpatient clinics as hospitals or ambulatory surgical centers, subjecting them to unnecessarily burdensome regulations.

Proposed Bills:

In 2004, **twelve** states introduced TRAP legislation or carried over bills from 2003:

AL	IL	MO	VA
CO	KS	MS	WA
FL	MD	PA	WV

Enacted Bills:

Mississippi enacted a bill amending its requirement that all abortions after sixteen weeks be performed in a hospital or outpatient clinic, rather than an abortion clinic, to any abortion after thirteen weeks. This law was challenged in court and is currently enjoined.⁷

Other 2004 Anti-Choice Legislation

Other categories of anti-choice bills that were introduced and enacted in 2004 include refusal clause bills, public funding bills, medical abortion bills, and bills affirmatively funding organizations that provide “abortion alternatives” counseling.

Refusal Clauses: These bills generally allow individual health care providers and/or institutions to refuse to provide, pay for, or make referrals for reproductive health services, based on their subjective religious or personal beliefs. The bills usually do not require that patients receive notice that their access to reproductive health services is being denied, or that access to these services is available elsewhere.

Refusal clause bills that either specifically include abortion or are broad enough to encompass abortion were introduced in the following states: **MI**, **MS**, **WA**, and **WV**. Many additional bills were carried over from 2003. **Mississippi** was the only state to enact an abortion-specific refusal clause bill.

⁷ *Jackson Women’s Health Organization v. Amy*, 330 F. Supp. 2d 820 (S.D. Miss. 2004).

Public Funding: States continue to pass legislation limiting public funding of abortion in a variety of ways. Examples of the type of restrictions imposed on low-income women include the following bills enacted in 2004: **Missouri** enacted legislation that prohibits funding of organizations that refer for or provide abortions although funding is given to “abortion alternatives” organizations; **Nebraska** passed legislation that limits public funding for equipment that could be used for abortion procedures; and **Utah** enacted legislation that prohibits the use of public funds for abortions performed due to lethal fetal abnormalities.⁸

Restrictions on Medical Abortion: Other state legislation included bills targeting medical abortion for new restrictions. **Ohio** passed a bill that places burdensome restrictions on the distribution and use of mifepristone (RU-486), and imposes reporting requirements. The law is being challenged in federal court and is currently enjoined.⁹

CPC Funding: Even as legislatures were busy limiting funding for family planning and abortion in 2004, they increased funding for "Crisis Pregnancy Centers" (CPCs) and “abortion alternatives” programs. CPCs may appear to provide comprehensive reproductive health services, but they do not always provide women with accurate information about their reproductive health care options, or even referrals for abortion or birth control services. In fact, CPCs have a well-documented history of misinforming and intimidating women in order to prevent them from accessing abortion care. The most popular form of funding for anti-abortion programs in 2004 was through "Choose Life" license plate legislation, which raises funds that are donated to CPCs. Such plates were proposed in **Illinois, Kentucky, Missouri, New Jersey, Rhode Island, Utah, and West Virginia**.¹⁰

Several other states, including **Delaware, Kansas, and Pennsylvania**, enacted legislation to fund CPCs through direct allocations of state money. Additionally, **Michigan** enacted legislation that provides grants for the purchase of ultrasound equipment by non-profit organizations like CPCs that will not use them for abortion care. **Louisiana** passed a resolution urging a federal court to overturn its ruling that found its “Choose Life” license plate scheme unconstitutional and the **Georgia** Senate passed a resolution to honor CPCs and CPC volunteers.

Legislation Supportive of Reproductive Choice In 2004

Proposed Bills:

At least twenty supportive bills were introduced in 2004 on a variety of different issues. Two states (**MI** and **MO**) responded to the trend of Choose Life license plates by introducing pro-choice license plates that would raise funds for family planning services. Three states introduced resolutions

⁸ Clinics and other medical facilities that receive public funding can still perform abortions for lethal fetal abnormalities as long as they do not use public funds for these abortions.

⁹ *Planned Parenthood Cincinnati Region v. Taft*, 337 F. Supp. 2d 1040 (S.D. Ohio 2004).

¹⁰ “Choose Life” license plate schemes have been successfully challenged in LA, SC, and TN, and a lawsuit is pending in OK. See *Henderson v. Stalder*, 265 F. Supp. 2d 699 (E.D. La. 2003); *Planned Parenthood of S.C. Inc. v. Rose*, 361 F.3d 786 (4th Cir. 2004) (rehearing en banc denied, 373 F.3d 580 (4th Cir. 2004)); *ACLU v. Bredesen*, 2004 U.S. Dist. LEXIS 26517 (Sept. 24, 2004).

honoring the *Roe v. Wade* decision and/or the March for Women's Lives (**CA, MI, and VT**).¹¹ In addition, the **Illinois** House passed a state Freedom of Access to Clinic Entrances Act.

Rhode Island introduced a number of pro-choice bills, including a repeal of an unconstitutional requirement that physicians notify a patient's husband before performing an abortion, and a bill that would specifically prohibit the state from interfering in a woman's decisions regarding pregnancy. Rhode Island also introduced a bill that would allow a physician or psychiatrist to determine that it was in a minor's best interest not to involve her parents in her abortion decision, as well as an affirmative clinic protection bill.

Several bills protecting privacy were introduced, including a **Minnesota** bill establishing a right to reproductive privacy and a **New York** bill prohibiting the release of abortion-related medical records to a state agency without a court order. **California** introduced two bills protecting the confidentiality of the personal information of health care workers.

Enacted Bills:

Three **California** bills were enacted: a resolution supporting the decision of *Roe v. Wade* and the historic March for Women's Lives, a resolution honoring a pro-choice Assembly member, and a privacy bill that increases protection of health care providers' personal information that is reported to state agencies.

¹¹ Over one million people participated in the March for Women's Lives on the national Mall in April in support of reproductive rights. March officials estimated the crowd as being one of the largest ever on the Mall. Marchers called on lawmakers to stop intruding on a woman's right to access critical reproductive health services. Women, men and children from all fifty states and the territories were joined by elected officials and celebrities during the march from the Washington Monument to the Capitol.