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„Texas & Oregon: A Comparative Analysis of Abortion Access Between States and the Consequent Impact on Human Rights“

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Reproductive freedom is critical to a whole range of issues.
If we can't take charge of this most personal aspect of our lives, we can't take care of anything.
It should not be seen as a privilege or as a benefit,
but a fundamental human right.

Faye Wattleton, Reproductive Rights Activist First African-American women to become the President of Planned Parenthood Federation of America from 1978 through 1992, and she remains an eternal inspiration to women around the world.[1]

[1] J. Lewis, 'Quotes by Activists', *Women's History Guide*, Wordpress, p.1, http://womenshistory.info/faye-wattleton-quotes/ (accessed 18 March 2018)

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Abbreviations

ACA	Affordable Care Act
ACLU	American Civil Liberties Union
ACOG	American College of Obstetricians and Gynaecologists
CDC	Centre for Disease Control
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
D&E	Dilation and Evacuation
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
GAO	Government Accountability Office
GCSW	Governor's Commission on the Status of Women
GDP	Gross Domestic Product
GOP	Grand Old Party, Republican Party
HB2	House Bill 2
HB15	House Bill 15
HB214	House Bill 214
HB3391	House Bill 3391
HB3994	House Bill 3994
HHR	Health and Human Rights Journal
HHS	Department of Health and Human Services
HIV	Human Immunodeficiency Virus
HRW	Human Rights Watch
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPD	International Conference on Population and Development
LGBTQ	Lesbian, Gay, Bi-sexual, Transgender and Queer
NARAL	The National Association for the Repeal of Abortion Laws

NCI	National Cancer Institute
NGO	Non-Governmental Organisation
OAS	Organisation of the American States
OBGYN	Obstetrician-gynaecologist
OPA	Office of Population Affairs
PCSW	President's Commission on the Status of Women
PPGT	Planned Parenthood of Greater Texas
RUDs	Reservations, Understandings and Declarations
SB8	Senate Bill 8
SB835	Senate Bill 835
SCHIP	State Children's Health Insurance Program
SCOTUS	Supreme Court of the United States
STI	Sexually Transmitted Infection
TRAP	Targeted Regulation of Abortion Providers
UDHR	Universal Declaration of Human Rights
UNHCR	United Nations Committee on Human Rights
WEF	World Economic Forum
WHO	World Health Organization
WWII	World War Two

1. Introduction & Research Question

The World Health Organization (WHO) estimates there are approximately 25 million illegal or unsafe abortions performed on women across the globe each year, with over 95% of them taking place in developing countries.[2] Banning abortion does not stop women from seeking the procedure, and instead has shown increase numbers in maternal mortality due to complications when seeking illegal avenues to terminate a pregnancy. Why then should one focus on critiquing the remaining 5% that take place in the worlds wealthier regions, where there are often laws that allow for safe and legal abortion? Put simply in regards to the situation in the United States (US), some areas have witnessed rapid regression in relation to abortion access due to restrictive policies that have created multiple hurdles for patients and providers alike. Further, a majority of reproductive legislation pertaining to abortion in the US are not medically or scientifically based.

On 23 January, 2017, recently-elected President Donald Trump spared no time on his first official day in office in signing an executive order to reinstate the *Global Gag Rule* (or more formally known as the *Mexico City Policy* when it was initially introduced in 1984).[3] This policy has the ability to affect 1.65 billion women of reproductive age that live in areas dependant on the funds that the US disperses internationally through this program.[4] The intention behind this order aims to:

> [H]alt US assistance for family planning programs overseas to foreign non-governmental organizations (NGOs) that used non-US government funding to provide abortion services, information,

[2] B. Ganatra et al, 'Global, regional, and sub regional classification of abortions by safety, 2010–14: Estimates from a Bayesian hierarchical model', *The Lancet*, vol. 390, no. 10110, pp. 2372 - 2381.Available from Science Direct (accessed 7 March 2018).
[3]S. Barot, 'When Antiabortion Ideology Turns into Foreign Policy: How the Global Gag Rule Erodes Health, Ethics and Democracy', The Guttmacher Institute, 8 June 2017, Available from https://www.guttmacher.org/gpr/2017/06/when-antiabortion-ideology-turns-foreign-policy-how-global-gag-rule-erodes-health-ethics, (accessed 8 June 2018).
[4] S. Barot, 'When Antiabortion Ideology Turns into Foreign Policy: How the Global Gag Rule Erodes Health, Ethics and Democracy', The Guttmacher Institute, 8 June 2017, Available from https://www.guttmacher.org/gpr/2017/06/when-antiabortion-ideology-turns-foreign-policy-how-global-gag-rule-erodes-health-ethics, (accessed 8 June 2018).

> counselling or referrals or to advocate for liberalizing or otherwise improving their country's abortion laws…[5]

This was seen as a victory for pro-life groups in the US, which in turn showed immediate support to apply the same policy on a domestic level as well.[6] The comment period on the proposed bill will end on 31 July 2018, and depending on the response from people across the country, President Trump can either choose to sign another executive order (as the global version was initiated), or a slower process can begin of moving the legislation through both the House and the Senate.

Previously, during his time in office President Obama explicitly forbid individual states from denying organizations federal funding based on their involvement with providing abortion services. He made it illegal for grantees to discriminate and withhold Title X allowances which accounted for the ability of over 4 million patients to access family planning services at no personal cost.[7] His protection was for the original initiative created in 1970, as Public Law 91-572, which was designed as a way to provide lower income individuals with federal financial assistance to obtain reproductive care. The budget is overseen and allocated by the US Department of Health and Human Services (HHS), and the Office of Population Affairs (OPA).

Although it created an opportunity for millions of Americans to receive free healthcare, the Trump Administration has just recently repealed the protection of Title X that President Obama granted in 2016.[8] This is known as the *Domestic Gag Rule*, and as of 1 June 2018, the nearly $300,000,000 available in funding is no longer granted to

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[5] S. Barot, 'When Antiabortion Ideology Turns into Foreign Policy: How the Global Gag Rule Erodes Health, Ethics and Democracy', The Guttmacher Institute, 8 June 2017, Available from https://www.guttmacher.org/gpr/2017/06/when-antiabortion-ideology-turns-foreign-policy-how-global-gag-rule-erodes-health-ethics, (accessed 8 June 2018).

[6] Groups that identify themselves as 'pro-life' consider abortion morally abhorrent, comparable to murder, and strive to criminalize it in the US.

[7] *Health and Human Services: Title X Family Planning Annual Report 2016 Summary*, [website], 2016, https://www.hhs.gov/opa/title-x-family-planning/fp-annual-report/fpar-2016/index.html, (accessed 14 June 2018)

[8] *Health and Human Services: Title X Family Planning Statutes and Regulations*, [website], 2016, https://www.hhs.gov/opa/title-x-family-planning/about-title-x-grants/statutes-and-regulations/index.html, (accessed 14 June 2018).

organizations that advocate or provide abortion services. Provision 1008 of HJ Res. 43, titled the Prohibition of Abortion, explains that "None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning."[9] Meaning clinics and providers that provide abortion access and information will no longer be financed, regardless of the additional healthcare services they may provide (such as mammograms, pregnancy tests, cervical cancer screenings, contraceptive methods and education HIV/AIDS and STI testing, etc). The general comment period on the latest bill to halt financial assistance from these organisations ends on 31 July 2018 and will then be reviewed by the federal government.

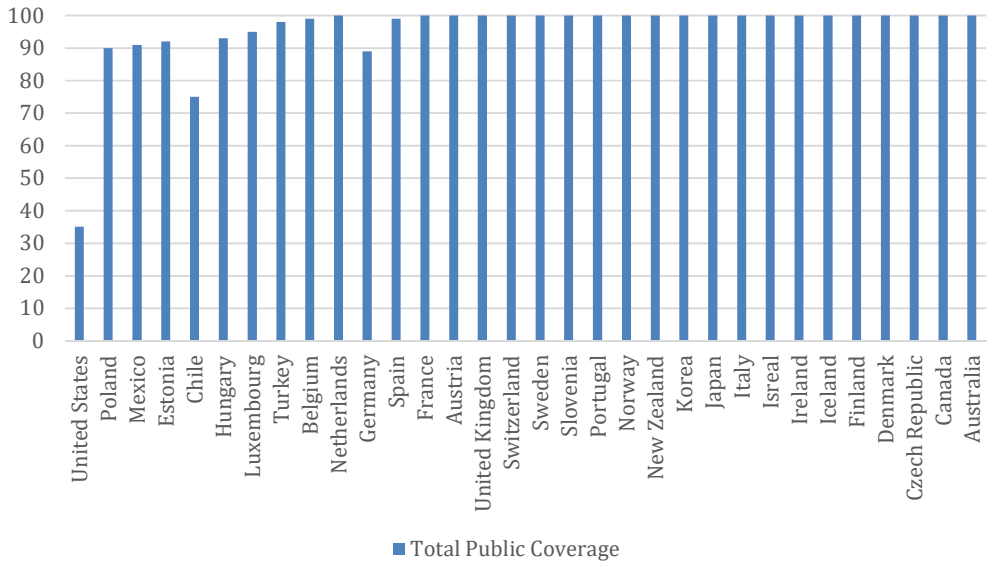
Political interest in reproductive issues has gained noticeable momentum throughout the past decade across the United States due to its highly divisive relationship in regards to societal values. One's reproductive decisions are often categorized as a *morality issue*. Which according to policy research conducted by the Guttmacher Institute, abortion has endured a stark decline in legislative support since 2010.[10] Ideals stemming from puritanical and patriarchal composition of America has led to a modern crossroads where a woman's autonomy has been politicized to the point of negatively impacting her sexual health. This often results in unnecessary physical, emotional, and financial hardships, and in more dire cases, fatalities due to severely misguided, superfluous policies.[11]

Why is it important to focus on one of the world's wealthiest, medically advanced and developed nations in regards to abortion, when the vast majority of unsafe procedures are performed in less developed countries?[12] In short, it is related to the fact that the

[9] *Health and Human Services: Title X Family Planning Statutes and Regulations*, [website], 2016, https://www.hhs.gov/opa/title-x-family-planning/about-title-x-grants/statutes-and-regulations/index.html, (accessed 14 June 2018).
[10] *Guttmacher Institute,* [website], 2016, https://www.guttmacher.org/article/2016/01/last-five-years-account-more-one-quarter-all-abortion-restrictions-enacted-roe, (accessed 7 March 2018).
[11] *American Health Rankings: United Health Foundation*, [website], 2018, https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/maternal_mortality, (accessed 5 March 2018).
[12] *World Health Organization*, [website], 2017, http://www.who.int/en/news-room/detail/28-09-2017-worldwide-an-estimated-25-million-unsafe-abortions-occur-each-year, (accessed 3 April 2018).

United States willingly remains an outlier in regards to nationalized healthcare, which is a standard component in nearly every other developed nation.

Table 1: OECD Universal Healthcare Coverage by Country 2014 [13]



As Table 1 illustrates the United States (when set against the other member states of the Organisation for Economic Cooperation and Development) is severely lacking in ensuring healthcare coverage for its population.[14] Less than half of Americans have healthcare coverage. The disconnect between available, affordable, and accessible care in relation to the people who seek it has become an avenue for politicians to invoke their personal morals and beliefs as an argument against equipping their constituents with universal coverage. Here is an example of how the message of morals over healthcare can be conveyed, from January 2018 "…the Trump administration announced that it would support the rights of health care workers who object to abortion, birth control, or

[13]S. Lendman, 'America: The only developed country without universal healthcare', *Centre for Research on Globalization*, 2017, https://www.globalresearch.ca/america-the-only-developed-country-without-universal-healthcare/5598311, (accessed 20 March 2018).
[14] M. Pearson, et al, *Universal Health Coverage and Health Outcomes,* [website], 2016, https://www.oecd.org/els/health-systems/Universal-Health-Coverage-and-Health-Outcomes-OECD-G7-Health-Ministerial-2016.pdf, (accessed 12 June 2018).

sex-change operations based on their religious convictions."[15] This quote is referring to the current administration moving to protect healthcare workers if they decide to refuse care based on their personal beliefs. This can be problematic when a woman who is seeking birth control, or an abortion is denied medical care due to the religious views of her provider.

These political trends have a direct impact on the human rights of Americans. In lieu of lawmakers mandating abortion access as an explicit right in itself, it can be argued by utilizing other rights that are concretely protected. They include a woman being able to exercise control over her own body, sexual health and reproductive choices.

In regards to positive and negative rights, the state is obligated to actively support the fundamental rights of its citizens, and refrain from interfering with their privacy as a way of respecting their rights as well.[16] In regards to healthcare, "Positive rights [obligate] you either to provide goods to others, or pay taxes that are used for redistributive purposes. Health care falls into the category of positive rights since its provision by the government requires taxation and therefore redistribution."[17] In the matter of abortion, this would equate into states providing the necessary infrastructure, such as staff and facilities, with funding from taxes. It would also suggest the state maintain its negative approach to the people in refraining from denying them the choice to carry out a pregnancy or not.

International standards and reproductive rights adopted by other highly developed countries illustrate that the United States is quickly outpaced when it comes to respecting sexual and reproductive rights. Arguing that health care is a right for everyone to enjoy

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[15] G. Korte, 'Trump is 'the most pro-life president in American history,' Pence says', USA Today, 18 January 2018, Available from https://www.usatoday.com/story/news/politics/2018/01/18/trump-most-pro-life-president-american-history-pence-says/1046812001/ (accessed 20 July 2018).

[16] *United Nations Human Rights office of the High Commissioner: International Human Rights Law,* [website], 2018, https://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx, (accessed 15 June 2018).

[17] A. Bradley, 'Positive rights, negative rights and healthcare', *Journal of Medical Ethics*, vol. 36, no. 12, 2010, pp. 838-841, Available from the US National Library of Medicine National Institute of Health (accessed 18 July 2018).

can be particularly difficult in America, when many of the population believe it is merely a 'privilege' earned on merit through your employer, or paid for privately with expensive premiums.[18] For example, a poll conducted in 2017 showed that 56% of Americans believed that healthcare should be the responsibility of the federal government to provide, while 42% disagreed and thought that it was an individual's responsibility.[19] President Obama stated that everyone deserves health care, and because of the Patient Protection and Affordable Care Act (ACA) he successfully passed in 2010, there are approximately 22 million people that have gained access to health insurance when they previously had none.[20] The ACA has been under attack since the Trump Administration took office, and in July of 2017 it was nearly repealed. With a final vote of 49-51, three Republicans vetoed their own 'Skinny Bill' that would have taken healthcare coverage away from millions.[21]

After the verdict of Roe v. Wade in 1973, the American public was given the mandate that abortion was now legal and could be provided safely throughout the country. In the decade before this case, it was estimated that "illegal abortions made up one-sixth of all pregnancy related deaths."[22] However the tension between the *pro-life,* (one who believes that life begins at conception and is morally against abortion as it is equated to murder)[23], and *pro-choice* (an individual who believes that women should have access to safe, legal abortion services, and has the right to terminate a pregnancy if she so

[18] H. Bauchner, 'Health Care in the United States: A Right or a Privilege', JAMA Network, 3 January 2017, Available from https://jamanetwork.com/journals/jama/fullarticle/2595503 (accessed 2 July 2018).
[19] *Gallup: Healthcare System*, [website], 2018, https://news.gallup.com/poll/4708/healthcare-system.aspx, (accessed 29 June 2018).
[20] M. Maruthappu, 'Is Heath Care a Right? Health Reforms in the USA and their Impact Upon the Concept of Care', *Annals of Medicine and Surgery*, vol. 2, no 1, 2013, pp 15-17, available from Elsevier (accessed 2 July 2018).
[21] T. Kaplan, and R. Pear, 'Senate Rejects Slimmed-Down Obamacare Repeal as McCain Votes No', The New York Times, 27 July 2017, Available from https://www.nytimes.com/2017/07/27/us/politics/obamacare-partial-repeal-senate-republicans-revolt.html (accessed 2 July 2018).
[22] 'Roe v. Wade: The Constitutional Right to Access Safe, Legal Abortion', *Planned Parenthood Action Fund,* [website], 2018, https://www.plannedparenthoodaction.org/issues/abortion/roe-v-wade (accessed 20 June 2018).
[23] *Pro-life Action League*, [website], 2018, https://prolifeaction.org/, (accessed 15 June 2018).

chooses)[24], movement has reignited the debate exponentially in the past decade.[25] The United States is a vast nation, with different viewpoints and ideologies throughout. This will become more apparent by analysing two of the most contrasting states: Oregon and Texas, and how the differences in reproductive policy translate into the realization or denial of rights for the women that reside there.

After establishing the groundwork of international standards, identifying specific human rights, and laying them against a backdrop of significant court cases decided both in the United States and abroad, this research will analyse the accessibility of reproductive care among two US states. Focusing mainly on their degree of abortion access. It is important to first build a foundation of worldviews when it comes to abortion access, in order to show the varying degrees of how women's rights are exercised elsewhere before focusing on the United States, and then narrowing it down even further to Texas and Oregon.

The aim of this thesis is to analyse how the restrictive regulations of abortion differ between Texas and Oregon. This will be based on population and voter demographics, the current political compositions of each state, including key elected officials. Once the composition of the political structure was been established it will show us what effects these policies have on the human rights of women living in either state.

[24] *National Abortion Federation*, [website], 2018, https://prochoice.org/, (accessed 12 June 2018).
[25] The term 'anti-choice' is also used in regards to individuals that disagree with legal abortion.

2. Methodology

In order to fully appreciate the similarities and differences between abortion policies between Texas and Oregon, both qualitative and quantitative data was utilized from a variety of sources including the Centre for Disease Control, the United States Census Bureau, the United States Department of Health and Human Services, the Centre for Reproductive Rights, and the American Civil Liberties Union. Due to the fact that this topic is rapidly evolving to adapt to changes invoked by the current Trump Administration, news articles from national outlets (including the Washington Post and USA Today), in addition to state level news sources (such as the Willamette Week and the Texas Tribune) were equally important components to the information found in this paper.

Qualitative information was found in peer reviewed articles from respected journals in the areas of public health, human rights, psychology, political science and feminist thought (gathered through journal databases such as SAGE and JSTOR). Included as well are political stances from personal campaign websites of candidate and current national and state level politicians.

Primary information was also gathered through an interview with a public affairs officer for Planned Parenthood of Greater Texas, to illustrate the complexities of how reproductive rights are viewed and dealt with between the two states. Non-governmental organizational literature was source to provide insights to proposed, failed, and enforced legislation in the US (e.g. the Guttmacher Institute, the National Association for the Repeal of Abortion Laws, and the Federation for Immigration Reform). In regards to referenced court cases, much of this information was sourced from the Supreme Court of the United States (SCOTUS) transcripts and records.

Quantitative secondary data was gained from a number of government sources for relevant healthcare statistics, population demographics and voter registration and turnout information. The webpages of both the Oregon and Texas government were used to

explain the political composition of each state, as well as their party's stances on the issue of abortion.

3. Approaching Sexual Healthcare and Policy through Feminist Theory

The theoretical approach is based on a foundation of multiple feminist political theories, as they hold a unique perspective when it comes to sexual healthcare for women. The dimension of gender embedded in reproductive rights is one of the more prominent components, therefore this research paper will navigate with the use of feminist political theory in regards to the relationship between societal factors and reproductive policy trends.

Feminism encompasses a wide array of themes and ideologies that stem from the basic idea that women are in fact equal to their male counterparts, and should be given parallel rights. However, there are several branches of feminism that maintain different opinions and priorities when it comes to familial and societal issues. For the past few decades scholars have routinely divided the main sects into the following four categories of feminism: liberal, socialist, Marxist and radical.[26] This research will focus on the views of liberal feminists in regards to reproductive rights.

In the early 1900s in the US women began to reject their domestic roles within the household, and began campaigning to be politically recognized as individuals rather than merely an accessory to their husbands or fathers.[27] This led to the revolutionary Women's Suffrage Movement, where besides securing the ability to vote, women also began to organize and create distinct groups in order to educate and engage other women to become involved in activities beyond the home, which introduced them to the idea that they should be able to plan and space their pregnancies as they see fit.

The general idea that the liberal feminists (or sometimes referred to as *equal rights feminists*) wanted to convey, was that women of any social standing deserved to be

[26] V. Bryson, *Feminist Political Theory*, London, Macmillan Publishers Limited, 2016, p.2.
[27] Bryson, p.84.

treated fairly by the law, so that she may be able to economically sustain herself as opposed to being financially dependent on a male family member.[28]

More recently, in 2015 women in the US were 35% more likely to be below the federal poverty level than men, with one in three female headed households considered to be under the federal poverty level as well.[29] In regards to reproductive rights this is highly important, as the ability to vote ensures that even in cases where there are policies that relate to gender specific topics (abortion, contraception, etc) women have the equal right to vote in favour or against the issue which puts them on equal footing with men.

Author W.A. Rogers observed that "…we find that female gender is a risk factor for increased inequity. The effects of gender, discrimination, and poverty can all be linked to the ill health of women." [30] Implying that women with low socioeconomic means, have less access to affordable health services, especially when lawmakers continue to impose unnecessary and expensive restriction on reproductive care. However, the same is not true for men. Feminists point out how unequal it is for each sex to get birth control. Methods used by males (such as condoms) can be easily purchased over the counter, while women much schedule and pay for a doctor's visit and then eventually are given a prescription for birth control at yet another additional cost. This is unequal treatment between genders, although it is based on the same situation.

Advocating for bodily autonomy is also key when women are faced with an unwanted pregnancy. Professor Debra Satz form Stanford University stated "there are limits on what the state can compel women who carry foetuses in their bodies to do. If women have rights over their own bodies, then they have rights not to have their bodies used by

[28] Bryson, p.85.
[29] C. Lowell and J. Tucker, '*National Snapshot: Poverty Among Women and Families, 2015'*, [website] 2017, https://nwlc.org/resources/national-snapshot-poverty-among-women-families-2015/ (accessed 29 June 2018).
[30] W. Rogers, 'Feminism and public health ethics', *Journal of Medical Ethics*, vol. 32, no. 6, 2006, pp 351-354, available from the National Centre for Biotechnology Information (accessed 16 June 2018).

others against their will."[31] This could also be considered when discussing the idea of marital rape, which wasn't illegal in the US until the passing of the Federal Sexual Abuse Act in 1986.[32] To be raped within a domestic relationship is still unrecognized in many countries around the world, yet feminists in the US fought for protection of their sexual autonomy even if it was within a legally recognized marriage. They proclaimed that forced sexual activity is a form of torture and ill-treatment. The revolutionary idea that women's lives didn't have to be based solely on reproducing was a message that feminists firmly believed in and tried to communicate to women on all socioeconomic levels.

Additionally, liberal feminist viewpoints on the government's involvement with women's rights began to include the terms: patriarchal paternalistic and moralistic laws.[33] These phrases be described in the following way:

> Patriarchal moralistic laws restrict women's options on the ground that certain options should not be available to women because morality forbids women's choosing them.... laws that prohibit or restrict prostitution or abortion…[T]ogether patriarchal paternalistic and moralistic laws steer women into socially preferred ways of life. These are unfair restrictions on women's' choices, on the liberal feminist view, because women's choices should be guided by their own sense of their self-interest and by their own values.[34]

These terms are directly connected to the policies that restrict abortion access because although there is no medical advantage to a waiting period, parental consent, or forcing a patient to view an ultrasound or hear a heartbeat, recent rationale behind passing legislation as this in the US is commonly paired with the argument that it's for the

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[31] D. Satz, 'Feminist Perspectives on Reproduction and the Family', *The Stanford Encyclopedia of Philosophy,* 2017, p. 9, Available from The Stanford Encyclopedia of Philosophy Online Database, (accessed 2 June 2018).
[32] J. Bennice and A. Resick, 'Marital Rape: History, Research, and Practice', *Trauma, Violence and Abuse*, vol. 4, no. 3, 2003, pp 228-246, Available from the National Criminal Justice Reference Service (accessed 10 June 2018).
[33] A.R. Baehr, 'Liberal Feminism', *The Stanford Encyclopaedia of Philosophy*, 2013, p.2, Available from The Stanford Encyclopaedia of Philosophy Online Database, (accessed 4 June 2018).
[34] Baehr, p.2.

'women's own good.' The overarching patriarchal idea that men or the law need to regulate a woman's reproductive system because they 'know better' is what liberal feminists oppose as they want to empower females to maintain their own bodily autonomy.[35]

Considered one of the founders of liberal feminism, Mary Wollstonecraft, proposed in the late 1700s that women and men could become equal partners, however they were shaped by society to fulfil different roles. The difference being women were contained to the home because it was believed that the raising of children was an innate skill that men could not learn. However, she argued that when a man was faced with raising a family he was equally able to succeed inside the home, and the same would be true for women who were given the chance to pursue a life outside of it if given the chance.[36] Theorizing that societal constructs were created and maintained to keep women out of the public eye.

Oregon was among the first group of states to grant women the vote officially in 1912 (preceding the 1920 federal law), and soon after President John F. Kennedy created the President's Commission on the Status of Women (PCSW), Oregon's own Governor recreated the project on a state level and produced the Governor's Commission on the Status of Women (GCSW) in 1963.[37] [38] This task force is still responsible for conducting research and informing policy makers on the needs of Oregon women, and was later recognized as an independent legislative entity in 1984 and continues to collect data and provide recommendations for women in the state.[39]

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[35] Baehr, p.3.
[36] 'Feminism, Liberal', *The Helsinki Blog*, [web blog], https://blogs.helsinki.fi/seksuaalietiikka2011/files/2010/10/9-Liberal-Feminism.pdf, (accessed 20 June 2018).
[37] *National Association of Commissions for Women*, [website], 2018, https://www.nacw.org/history.html, (accessed 20 June 2018).
[38] *Oregon Commission for Women*, [website], 2018, https://www.oregon.gov/women/Pages/about_us.aspx, (accessed 3 July 2018).
[39] *Oregon Commission for Women*, [website], 2018, https://www.oregon.gov/women/Pages/about_us.aspx, (accessed 3 July 2018).

Women in Texas had organized themselves to the point where they were allowed to go to the polls in 1919 for the primary elections, but they were not officially granted the right to vote until after it became a federal law on June 4th, 1920.[40] Continuing their momentum, the multiple political organizations of the time centred around women chose to focus their attention on creating a bill that would ensure equal rights between men and women in regards to property, children's custody agreements and financial matters. The bill never moved forward due to the chaos of the Great Depression in the 1930s, and the Texas Equal Rights Act was only passed decades later in 1972 after women re-ignited the campaign after World War Two (WWII).[41]

Liberal feminists would agree that the law allowing women to vote equally alongside their male counterparts was a monumental victory, and paved the way to seek more independence throughout their private family life and women's roles in the public as well. The late Susan Moller Okin, argued that the entire structure of state-recognized marriage was a large component in the oppression of American women, and that until marriage was seen as an equal partnership (where neither individual was forced to give up their career to remain in the home), women would gain a more equal footing in society.[42]

Perhaps one of the most famous pieces written by a liberal feminist and reproductive rights, is *A Defence of Abortion*, written in the 1970s by Judith Jarvis Thompson. She goes through many difference scenarios where a woman's health or right to life is secondary to the foetus she is carrying:

> Opponents of abortion have been so concerned to make out the independence of the foetus, in order to establish that it has a right to life, just as its mother does, that they have tended to overlook the

[40] S. Brandenstein, *'Texas State Historical Association: National Women's Party',* [website], 2018, https://tshaonline.org/handbook/online/articles/wensq, (accessed 3 July 2018).
[41] *Texas State Historical Association: Texas Equal Rights Amendment*, [website], 2018, https://tshaonline.org/handbook/online/articles/mlt02, (accessed 12 July 2018).
[42] 'Feminism, Liberal', *The Helsinki Blog*, [web blog], https://blogs.helsinki.fi/seksuaalietiikka2011/files/2010/10/9-Liberal-Feminism.pdf, (accessed 20 June 2018).

> possible support they might gain from making out that the foetus is dependent on the mother, in order to establish that she has a special kind of responsibility for it, a responsibility that gives it rights against her which are not possessed by any independent person.[43]

The argument resulting from her work, is that even if a woman never intended to become pregnant, she is still pressured (if not legally obligated) to deliver and care for a child based on what society expects of her. She also mentions there is no parallel of this situation in regards to a male having to disrupt his health, and life, in order to sustain another. She also comments that in a male dominated environment, the prioritizing of a foetus as opposed to the woman carrying it is discriminatory, and belittles her as an independent entity since she is now only viewed as being pregnant. Civil society and politicians have been treating men and women unequally for years in this respect, which is a theme carried through today in laws targeting women's reproductive decisions.

Individual freedoms are also agreed upon by classic liberal and libertarian feminists, which identify engaging in intercourse, using a method of birth control, and abortion a right that shouldn't be interfered with by the government.[44] This outlook encourages equal treatment for men and women by the law, but further states that if a law is used to coerce women into circumstances beyond their control it is a violation. An example of this would be Texas' foetal burial law which demands any remains after an abortion, ectopic pregnancy or even a miscarriage must be cremated or buried.[45] This can be considered a violation of the women's rights because she may not hold the same religious views as the policy makers, she may not have the financial means to pay for the cremation or burial, and the emotional and mental stress sustained during this type of situation is needlessly multiplied. Another aspect of the policy is that abortion clinics must cover a large portion of the costs, which increases their financial burden and has resulted in the

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[43] J. Thompson, 'A Defence of Abortion', *Philosophy and Public Affairs*, vol. 1, no. 1, 1971, pp. 69-80, Available from Colorado University Database http://spot.colorado.edu/~heathwoo/Phil160,Fall02/thomson.htm (accessed 12 July 2018).

[44] Baehr, p. 12.

[45] M. Evans, 'Texas fetal remains burial rule blocked by federal court again', Texas Tribune, 29 January 2018,https://www.texastribune.org/2018/01/29/texas-fetal-remains-burial-rule-blocked-federal-court-again/, (accessed 7 March 2018).

closing down of multiple facilities throughout Texas.[46] This leaves more women at risk of seeking alternative and unsafe ways to terminate an unwanted pregnancy.

This information is relevant to show that women in the US have often been systematically left out of legal decisions that were responsible for shaping their lives. The right to vote is considered a crucial point in feminist history, and it continues to be an increasingly important tool in how state entities protect and respect the rights of women in both Texas and Oregon.

[46]M. Perchick, 'New Texas provisions require burial or cremation of aborted fetuses', USA-Today, 1 December 2016, Availible from https://www.usatoday.com/story/news/nation-now/2016/12/01/new-texas-provisions-require-burial-cremation-aborted-fetuses/94721914/?showmenu=true (accessed 10 March 2018).

4. Current International Legal Standards Regarding Abortion Access

In a general sense, the United States is often seen as having more liberal policies regarding contraception availability, and abortion access for its citizens. This view tends to be a bit misleading, due to the fact that although on a federal level abortion is legal, each of the fifty individual states are entitled to form their own policies on who can actually exercise their right to end an unwanted pregnancy. To date there are six states in total that have restricted this procedure to the extent that there remains only one clinic able to perform abortions open in Kentucky, West Virginia, South Dakota, North Dakota, Mississippi and Wyoming respectively.[47] Given the combined population of these states, this effectively means that there are only six clinics available for a nearly 4.4 million women.[48] This creates longer waiting periods, a farther distance to travel, and is essentially more expensive for the women residing in these states and other similar states which have restricted access to healthcare options. Although the US retains the appearance of having a progressive stance on abortion, the reality is drastically different depending on what part of the country a woman happens to reside.

In order to fully comprehend the intricacies and effects of legislation specifically enacted in Texas and Oregon, we must first gain a general understanding of reproductive freedom, namely abortion access, on a global scale. Even though the US is repeatedly deemed the wealthiest nation on earth, there is a stark contrast of extreme poverty present, and Americans lack of healthcare coverage is a constant issue within the federal and state level governments. Professor Phillip Alston recently completed a report in December 2017, for the United Nations which documented the dire the situation of deep poverty in America. He is the Special Rapporteur on Extreme Poverty and Human Rights, and among his comments noted that although the US leads the world in overall wealth, it is unequally distributed and results in 40 million Americans without any sort

[47] L. Sanders, 'Inside the States with one Abortion Clinic: Kentucky Fights for its Last Provider in 2018', Newsweek, 8 January 2018, available from https://www.newsweek.com/state-without-abortion-clinic-kentucky-772692 (accessed 15 June 2018).
[48] 'US States – Ranked by Population 2018', *World Population Review*, [website], 2018, http://worldpopulationreview.com/states/ (accessed 15 June 2018).

of health care coverage or access.[49] Comparatively when another nation has a lesser overall gross domestic product (GDP), they still choose to allocate funds in order to provide comprehensive coverage to their citizens. An example could be the neighbouring country of Canada, with a GDP in 2016 of $1.53 trillion, it falls short of the Untied State's total GDP of $18.57 trillion, yet they provide their citizens with comprehensive universal health care.[50] These differences in spending eventually lead to either the realization or the blatantly ignored right to health of the population.

Regardless of factors such as age, race, ethnicity, religion or geographic location, women face a wide spectrum of repercussions when faced with the prospect of ending an unwanted pregnancy. Shifting from previously being a discussion of one's private affairs, to presently being found at the forefront of many global, and perhaps more aggressive American political platforms, abortion has established itself as a woman's right to choose for herself.

Although, the majority of illegal and unsafe procedures occur outside of the United States (mainly concentrated in developing countries in Africa, Asia and Latin America), women residing in the US are not immune to the difficulties of seeking legal, accessible care due to factors such as financial and politically induced limitations.[51] Because of the regulations imposed on abortion accessibility in their states, University of Texas researchers led by Dr. Joseph Potter, conducted a study in 2015 that concluded around 240,000 Texan women had attempted to terminate a pregnancy themselves.[52]

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[49] P. Alston, 'Statement on Visit to the USA, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights', 15 December 2018, available from https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22533 (accessed 15 June 2018).

[50] 'United States GDP', *Trading Economics*, [website], 2018, https://tradingeconomics.com/united-states/gdp (accessed 25 July 2018).

[51] B. Ganatra et al, 'Global, regional, and sub regional classification of abortions by safety, 2010–14: Estimates from a Bayesian hierarchical model', *The Lancet*, vol. 390, no. 10110, pp. 2372 - 2381.Available from Science Direct (accessed 7 March 2018).

[52] *University of Texas at Austin: Texas Policy Evaluation Project,* [website], 2018, https://liberalarts.utexas.edu/txpep/about.php, (accessed 20 July 2018).

Worldwide there are currently six counties with explicit bans on abortion regardless of rape or danger to the life of the mother: Chile, the Dominican Republic, El Salvador, Nicaragua, Malta and Vatican City.[53] It is also worth noting that the majority of Europe (73%) allows legal access to terminate a pregnancy on any grounds, with more flexibility than the United States when it comes to the second or third trimester (13-40 weeks gestation time).[54] A couple of notable deviations within the attitudes of the European Union (EU) towards abortion are the countries of Ireland, and Gibraltar. The former successfully held a referendum vote in May of 2018, in order to repeal Article 40.3.3 of the Irish Constitution. The ballot to repeal the standing ban was won with nearly 67% of the public voting in favour.[55] Known colloquially as the *8th Amendment*, it was introduced in 1983 which "protects the life of the unborn" by implementing one of the world's strictest bans on all forms of abortion.[56] There is another dimension in the abortion debate that was prevalent throughout Ireland's history and also plays a large role in the US - religion. According to the Irish Census conducted in 2016, 78.3% of Irish citizens identify as Catholic.[57] Having such a high population of people following one religion, wold inevitably ensure their morals and ideals would translate into their legislation, which we will explore in more detail when discussing the population demographics in Texas and Oregon. Details as to how this new access in Ireland will be granted is still unfolding at this point in time, but it may protect women from having to travel abroad for abortion services.

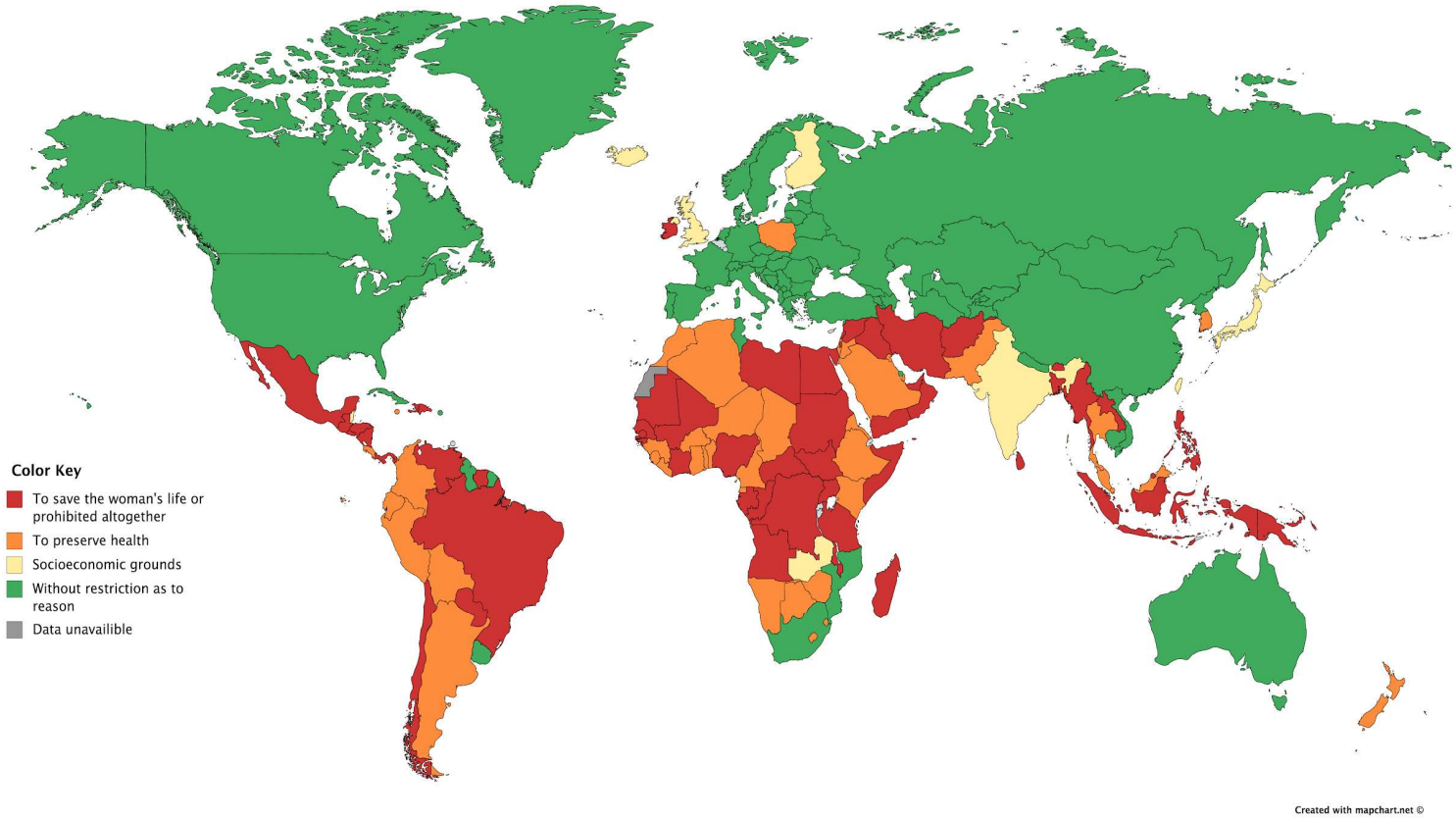
The country of Gibraltar maintains the punishment of life in prison for anyone attempting "to procure abortion" as stated in section 162-163 of the 2011 Crimes Act.[58] Women travel outside of the country for the procedure so there is no accurate estimate of the

[53] A. Theodoru, *The Pew Research Center,* [website], 2015, http://www.pewresearch.org/fact-tank/2015/10/06/how-abortion-is-regulated-around-the-world/ , (accessed 6 May 2018).
[54]The Pew Research Center
[55] 'Irish Abortion Referendum: Ireland Overturns Abortion Ban', BBC News, 26 May 2018, Available from https://www.bbc.com/news/world-europe-44256152 (accessed 28 May 2018).
[56] *Irish Council for Civil Liberties*, [website], 2018, https://www.iccl.ie/equality/womens-rights/womens-equality-and-the-8th-amendment/, (accessed 3 June 2018).
[57] *Irish Census (2016),* [website], 2017, https://faithsurvey.co.uk/irish-census.html (accessed 30 May 2018).
[58] HM Government of Gibraltar: Criminal Codes (2011) 10/162-163.

abortion rate among the population of Gibraltar. Data collected by the United Nations ranks the United States 10th among the world's countries that experience the highest rates of abortion. It is preceded by Bulgaria, Cuba, Estonia, Georgia, Kazakhstan, Romania, Russia, Sweden, and Ukraine.[59]

[59] *United Nations World Abortion Policies*, [website] 2013 http://www.un.org/en/development/desa/population/publications/pdf/policy/WorldAbortionPolicies2013/WorldAbortionPolicies2013_WallChart.pdf , (accessed 27 May 2018).

Map 1: The World's Abortion Laws 2018[60]



[60] *Centre for Reproductive Rights: World Abortion Map 2018*, [website], 2018, http://worldabortionlaws.com/map/, (accessed 27 May 2018).

Map 1, created with data from the Centre for Reproductive Rights, illustrates an overall summation of abortion legalization across the globe.[61] The map is divided into colour categories ranging from red, orange, yellow and green (with an additional shade of grey provided where information was not obtained for the study). The most restrictive nations are more prominent in the Global South, with heavy concentrations found in Sub-Saharan Africa, Central and parts of South America, the majority of the Middle East, and scattered areas of Asia (noticeably Ireland has not been updated to reflect the recent referendum to legalize abortion).

Most industrialized countries in Europe agree providing women the option for a safe and legal abortion, as does Australia, Russia, South Africa, a large portion of Asia, Canada, and of course our main country of focus: the United States.

Although this map illustrates the US as falling into the category with the most inclusive policy regarding abortion, there are other factors that are intentionally introduced to hinder accessibility and affordability among some US states. The importance of introducing the many different worldviews regarding abortion is key in understanding it, and placing it in perspective when switching to view it on a domestic level.

4.1 International Human Rights Instruments and Respective Rights as they Pertain to Abortion Access

The following compilation of international treaties and conventions represents the benchmark standard for how the United States should be respecting reproductive freedoms in order to remain aligned with protecting their citizens autonomy with the other developed nations. However, it is also worth noting that although these are internationally recognized agreements with many nations supporting them, there are a few instances where the United States has wilfully refused to sign, or ratify the

[61] *Centre for Reproductive Rights: World Abortion Map 2018*, [website], 2018, http://worldabortionlaws.com/map/, (accessed 27 May 2018).

documents. Meaning that the US may be exempt from criticism if they fail to follow the guidelines, simply because they chose not to formally recognize and adopt them. An initial signature of does not legally bind the country to the rules set forth within the document, however it implies that the treaty or convention will be examined and then altered to best fit the country in question. After it has been adopted by the signatory, they may then ratify it which concludes the process and gives an individual country a legal obligation to follow the rules and regulations.[62] The significance of wilfully ignoring a treaty meant to serve as an instrument to protect the rights of your citizens, points to 'American exceptionalism' in that the US imagines they are more capable of governing their own country without input from the international community.

The Universal Declaration of Human Rights (UDHR)

Although this document is not legally binding, it was the international community's first conception of a fundamental list of values that all nations should feel honoured and obligated to uphold. The final draft was published in 1948, and it introduced the world to a set of standards that would become crucial to the foundations of later treaties.[63] Article 1 declares that every human has the right to dignity, followed by Article 2 and 7 which both state everyone deserves to be free from discrimination based on multiple factors including one's own sex.[64] This will be discussed in more detail as it connects to unequal effects of legislation for men and women when it comes to reproductive rights.

Article 3 states that "everyone has the right to life, liberty and the security of person."[65] The right to life is threatened when a woman is denied safe and legal access to procure an abortion because the alternatives can be fatal. The WHO has reported that 45% of all abortions that took place worldwide between 2010 and 2014 were illegal and therefor

[62] *Convention on the Rights of the Child: Signature, ratification and accession,* [website], 2018, https://www.unicef.org/crc/index_30207.html (accessed 3 June 2018).
[63] *Universal Declaration of Human Rights (adopted 10 December 1948) 217 A (III).*
[64] *Universal Declaration of Human Rights (adopted 10 December 1948) 217 A (III), Article 2, 7.*
[65] *Universal Declaration of Human Rights (adopted 10 December 1948) 217 A (III), Article 1.*

done without adhering to the proper measures as defined by the organization.[66] These unsafe procedures are the cause of death for 68,000 women each year, and of those that survive it is estimated that 5 million will have significant complications to their overall health for the rest of their life.[67] For states to restrict or deny a medically safe abortion for its women, creates a unnecessary threat to their right to life.

Article 12 solidifies the right for all people to be free from "...arbitrary interference with [their] privacy, family…" from the state.[68] The practice of family planning is a highly personal decision and this declaration respects the right of individuals to make these choices without coercion or force from their government, but instead to decide these matters within their private household. Since the US was an original author of the document in 1948, they are morally obligated to uphold the rights within it.[69]

International Covenant on Civil and Political Rights (ICCPR)

This Covenant was ratified in 1966 and was put into force ten years later, and now has the support of 171 countries, including the United States.[70] The US ratified it in 1992 and it was immediately enshrined as federal law due to the *Supremacy Clause* of the US Constitution.[71] However, as the American Civil Liberties Union (ACLU) quickly brings attention the fact that although:

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[66] 'Worldwide, an Estimated 25 Million Unsafe Abortions Occur Each Year', World Health Organization, 27 September 2017, Available from https://www.guttmacher.org/news-release/2017/worldwide-estimated-25-million-unsafe-abortions-occur-each-year (accessed 18 May 2018).
[67] L. Haddad, 'Unsafe Abortion: Unnecessary Maternal Mortality', *Reviews in Obstetrics and Gynaecology*, vol. 2, no. 2, pp. 122-126, available from the National Centre for Biotechnology Information https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2709326/ (Accessed 18 May 2018).
[68] *Universal Declaration of Human Rights (adopted 10 December 1948) 217 A (III), Article 12.*
[69] 'Human Rights and the US', *The Advocates for Human Rights,* [website], 2018, https://www.theadvocatesforhumanrights.org/human_rights_and_the_united_states (accessed 20 July 2018).
[70] *United Nations Human Rights Office of the High Commissioner: Status of Ratification Interactive Dashboard*, [website], 2014, http://indicators.ohchr.org/, (accessed 18 May 2018).
[71] *United Nations Human Rights Office of the High Commissioner:Status of Ratification Interactive Dashboard*

> ...[T]he US must comply with and implement the provisions of the treaty just as it would any other domestic law, subject to Reservations, Understandings and Declarations (RUDs) entered when it ratified the treaty. Thought the government retains the obligation to comply with the ICCPR, one of the RUDs attached by the US Senate is a *Not self-executing Declaration*, intended to limit the ability of litigants to sue in court for direct enforcement of the treaty.[72]

Essentially claiming that the United States is committed to uphold the ideas at face value, but also ensuring that there is limited to no liability if the standards are not met.

Self-determination is immediately protected within the first article of this covenant, as well as one's ability to seek out their own path of social, economic and cultural development.[73] This is important when discussing family planning due to the fact that half (49%) of all abortions performed in the US are for women who currently sit below the federal poverty level, and the economic implications of raising another child often become a deterrent to proceeding with the pregnancy.[74] When looking at how this specifically can translate into the US, in 1987 30% of abortions were provided for those categorized as under the federal poverty level, and in 2014 that number jumped to 49%.[75] The cost of raising a larger family could cause a financial burden that may very well be out of reach for many American women.

Article 3 of the ICCPR concretely states that there should be no discrepancy between men and women having the ability to enjoy all the rights put forth in the covenant.[76] This becomes relevant when states within the US develop policies and legislation targeting

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[72] American Civil Liberties Union*, FAQ the covenent on civil and political rights*, [website], 2014, https://www.aclu.org/other/faq-covenant-civil-political-rights-iccpr, (accessed 18 May 2018).
[73]International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 1.1
[74] J. Jerman, and R. Jones, Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014', *American Journal of Public Health*, vol. 107, no. 12, pp 1905-1908, Available from The American Public Health Association (accessed 25 May 2018).
[75] *Guttmacher Institute: Abortion Rates by Income*, [website], 2017, https://www.guttmacher.org/infographic/2017/abortion-rates-income, (accessed 8 March 2018).
[76]International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 3.

family planning programs due to the fact that the restrictions unevenly affect females as opposed to males living within that state.

Article 7 puts forth the right to be free from "...torture, cruel [or] inhumane and degrading treatment."[77] Although this is traditionally seen as someone begin subjected to extreme physical or mental harm, it has been noted several times in the international community that putting roadblocks to birth control and abortion access qualifies as a form of inhumane and degrading treatment nonetheless. In his report published in 2016, the Special Rapporteur on Torture, Juan Méndez wrote that "Highly restrictive abortion laws that prohibit abortions even in cases of incest, rape or foetal impairment or to safeguard the life or health of the woman violate women's right to be free from torture and ill-treatment."[78] This statement conveys the drastic implications a woman might sustain if she is forced to carry an unwanted pregnancy against her will. It is equated with torture which is a violation of her rights to mental and physical well-being. He also proceeds to include administrative, and bureaucratic policies that hinder access to this procedure can be considered inhumane and degrading as well. These legislative trends have soared over the past decade in Texas as we will discuss further on.

Moving on to Article 17.1 one can read the firm statement that an individual has a right to live a private life without "...arbitrary or unlawful interference with his privacy, family, home..."[79] Privacy is inherently intertwined with reproductive choices, ergo this solidifies a woman's right to opt either to proceed or terminate a pregnancy if she so chooses.

Also applicable are the passages in Article 18.1-2, which explain:

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[77]International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 7.

[78] United Nations, General Assembly, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,' A/HRC/31/57, (5 January 2016), Availible from https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/SR%20on%20Torture%20Report.pdf, (accessed 8 March 2018).

[79] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 17.1.

> Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching
> No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

The subject of religion will be elaborated on when discussing population and voter demographics, and a particular piece of Texas legislation regarding forced foetal burial regulations. That is, there is a large percentage of Americans that affiliate themselves with the Christian faith, and disagree with abortion based on their belief that life begins at conception, ergo you are committing murder because there is a being in your womb immediately after the egg is fertilized. Yet, many from the medical community is asked for a comment many will argue that there is an absence of personhood until foetal viability is reached between 22 or 23 weeks (meaning the foetus could survive independently outside of the womb), while others often suggest that until the foetal brain is fully developed around 28 weeks it does not count as an independent entity.[80] When international law says you have the right to follow a religion of your choosing, it is also implied that you have the right to be free from religion as well. This argument of forcing religious beliefs and values through legislation will be revisited when discussing state specific laws.

Article 23.2 provides a platform for women to argue their reproductive choices which protects their decision making in regards to founding a family when they deem fit (this as opposed to a medical professional or the government imposing decisions on their personal reproductive choices.)[81] It stipulates that both men and women are able to found a family of their choosing, which can be potentially interfered with when legislation

[80] V. Hughes, 'Personhood Week: Conception Is a Process', National Geographic, 17 November 2014, available from https://www.nationalgeographic.com/science/phenomena/2014/11/17/personhood-week-conception-is-a-process/ (accessed 12 June 2018).
[81] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 23.2.

demands a pregnancy be followed through to full term, or barriers in regard to access to birth control and science based education as we will later see when we examine state specific policies in Texas and Oregon.

The final applicable portion of the ICCPR can be found within Article 26, which reads:

> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[82]

This translates into the equality of both men and women to access health services based on their needs without denying one sex access to care. It also serves to protect individuals that practice different religions and hold different views politically to be provided an equal amount of care as other patients who don't necessarily share their ideals and viewpoints. These are important factors in the abortion debate within the context of the United States. Self-identified pro-life politicians frame contraception and abortion as a morality issue, and in areas where they are the politically dominant party, they tend to imposes their own religious values through legislation onto others regardless of the fact the entirety of the population may not share those same beliefs.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Another list of vital rights was set forth in the ICESCR which was also constructed in 1966, and to date is ratified by 168 countries with one notable exception being the United States.[83] The US has chosen to remain a signatory in regards to this treaty, and in doing so stands alongside Cuba, Palau and Comoros.

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[82] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 26.

[83] *United Nations Human Rights Office of the High Commissioner:Status of Ratification Interactive Dashboard*

There are some parallels with this covenant and the earlier discussed ICCPR. For example Article 1.1 the right to self-determination is established yet again, as is the right to be free from discrimination based on sex which is mentioned in both Article 2.2 and 3.[84] Additionally Article 10.1 again mentions the right to freely design a family of your choosing, while Article 12.1 concretely provides the protection of physical and mental health (which can be compromised when faced with bringing to term an unviable foetus, a pregnancy caused by rape, or an unwanted pregnancy due to other factors such as financial strain).[85]

Worth mentioning are Article's 6.1 and 7 (b), which set a standard for the state to protect one's right to work, and further declares that working conditions must be safe as well. This will become a key factor when we later discuss Targeted Regulation of Abortion Providers (TRAP) laws.

Reading on to Article 12.2 (d), we learn that the states are obligated to pursue "the creation of conditions which would assure to all medical service and medical attention in the event of sickness." Although the final word 'sickness' is used in this statement, it is still relevant to protect women seeking abortion care in that some cases of pregnancy can become detrimental to the mother. This becomes evident when females who are barely of reproductive age become pregnant and they carry more of a risk if they are made to carry a child to term, and then required to endure the possibility of complications that can occur during delivery.

The ICESCR also mentions in Article 15.1(b) that people everywhere have the right "To enjoy the benefits of scientific progress and its applications."[86] This could be interpreted

[84]International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976), 993 UNTS 3, Article 2.2, 3.
[85] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976), 993 UNTS 3, Article 12.1.
[8686]International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976), 993 UNTS 3, Article 15.1(b).

to facilitate that women seeking an abortion are given medically accurate information (that is scientifically based), as opposed to material created to shame or frighten women about the procedure. This will be discussed further when we examine literature displayed at abortion clinics throughout Texas.

Another example would be if a woman were experiencing an ectopic pregnancy (which occurs when a fertilized egg incorrectly implants in the uterus), because this requires emergency surgery in order to remove the foetus before further complications occur. Fatalities can also occur when women are forced to look to illegal methods of termination. It was announced in 2016 by the Special Rapporteur, Juan Méndez, to the UN General Assembly that "...unsafe abortion was the third leading cause for maternal mortality rate globally."[87] When patients are denied or explicitly forbidden the care or procedures they seek, it can lead to death. Which could be considered a failing on the part of the state to provide adequate resources for its citizens to fully realize their right to have a healthy life.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Created in 1979 and officially put into force in 1981, this convention is perhaps the most applicable international instrument in regards to reproductive rights. However, we once again find the United States absent from the ratification process (in lieu of becoming a signatory in 1980)[88]. There are however 189 states that have formally committed to it, and a further 109 have ratified the Optional Protocol (the US is one of 75 other countries that has chosen to take no action on this treaty).[89]

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[87] United Nations, General Assembly, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/31/57, (5 January 2016), Available from https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/SR%20on%20Torture%20Report.pdf, (accessed 8 March 2018).

[88] *United Nations Human Rights Office of the High Commissioner:Status of Ratification Interactive Dashboard*, [website], 2014, http://indicators.ohchr.org/, (accessed 18 May 2018).

[89] Covenant on the Elimination of all forms of Discrimination Against Women (adopted 18 December 1989, entered into force 3 September 1981) 1249 UNTS 13.

The very first article sets the tone for the foundation of the treaty in securing the equal rights of women in all aspects of society:

> For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. [90]

As discussed earlier this can be directly related to the denial of reproductive healthcare that puts women at a disadvantage while have little consequence for members of the opposite sex. This thought is mirrored in Article 2, where the treaty mentions the abolition of legislation that unfairly targets women.[91] Article 5 (b) issues the following recommendation, "States Parties shall take all appropriate measures: To ensure that family education includes a proper understanding of maternity as a social function…"[92] This is relevant because there is a large discrepancy in how Texas and Oregon address the topic of scientifically based sexual education versus curriculum taught in schools based on an abstinence only model. This is referred to again in Article 16 (e) "The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."[93]

The treaty then more specifically addresses healthcare in Article 12.1:

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[90]Covenant on the Elimination of all forms of Discrimination Against Women (adopted 18 December 1989, entered into force 3 September 1981) 1249 UNTS 13, Article 1.
[91] Covenant on the Elimination of all forms of Discrimination Against Women (adopted 18 December 1989, entered into force 3 September 1981) 1249 UNTS 13, Article 2.
[92] Covenant on the Elimination of all forms of Discrimination Against Women (adopted 18 December 1989, entered into force 3 September 1981) 1249 UNTS 13, Article 5 (b).
[93] Covenant on the Elimination of all forms of Discrimination Against Women (adopted 18 December 1989, entered into force 3 September 1981) 1249 UNTS 13, Article 16 (e).

> States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.[94]

This excerpt solidifies the need for accessible family planning measures, and requires non-discrimination in providing care as well. Which implies that if a woman is party to a specific political or religious ideology, she should be given the same opportunities for care as the rest of the population. Furthermore, we can surmise that medical treatment and procedures cannot be denied based on solely on the sex of the patient. Outlawing abortion could be seen as a form of medically based gender discrimination due to the simple fact that only females would be affected by the policy and it would have little impact on their male counterparts.

Article 14 of CEDAW singles out the plight of women living in rural areas, and the fact that they may need more protection to ensure they have equal access to resources that will ensure a parallel standard of living with women residing in urban areas.[95] The American College of Obstetrics and Gynaecologists, estimated in 2014 that the total female population of women living in rural communities throughout the US was close to 23%.[96] This is important to consider due to both Texas and Oregon having large areas of rural populations. When trying to access abortion services some women are forced to travel hundreds of miles because there isn't sufficient access to healthcare in their own communities. The Guttmacher Institute reported in 2014 that "...96% of Texas counties had no clinics that provided abortions, and 43% of Texas women lived in those counties."[97] This helps to frame the argument that the state is not upholding its obligation to provide adequate healthcare for its citizens.

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[94] Covenant on the Elimination of all forms of Discrimination Against Women (adopted 18 December 1989, entered into force 3 September 1981) 1249 UNTS 13, Article 12.1.
[95] Covenant on the Elimination of all forms of Discrimination Against Women (adopted 18 December 1989, entered into force 3 September 1981) 1249 UNTS 13, Article 14.
[96] 'Committee on Health Care for Underserved Women: Committee Opinion', *The American College of Obstetricians and Gynaecologists*, February 2014, available from https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Health-Disparities-in-Rural-Women (accessed 3 June 2018).
[97] *The Guttmacher Institute*

Programme of Action, adopted at the International Conference on Population and Development (ICPD)

In 1994 there was a global conference held in Cairo to discuss future goals for the improvement of human rights, with a focus on the opportunities for women and girls.[98] The United States was among the other 179 nations present, and together they created the Program of Action which serves to guide nations in recognizing and reinforcing rights for their populations. Most relevant to this research is an explicit action item found in section 7.2 which states:

> …[G]overnments should make it easier for couples and individuals to take responsibility for their own reproductive health by removing unnecessary legal, medical, clinical and regulatory barriers to information and access to family-planning services and methods.[99]

This is important in regards to healthcare in Texas, because TRAP laws have been introduced at a frequent rate over the last decade with the intention being to create superfluous hurdles that patients and providers must overcome in order to receive or provide reproductive care. The National Association for the Repeal of Abortion Laws (NARAL) reports that Texas as a state doesn't require any form of HIV or sexual education (sex ed) to be included in the curriculum of their public schools.[100] They then elaborate "...if a school chooses to teach these topics, it is required to emphasize abstinence until marriage, and is not required to include medically accurate information about contraception."

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[98] *International Conference on Population and Development*, [website], 2018, https://www.unfpa.org/icpd, (accessed 3 June 2018).
[99] International Conference on Population and Development, *Program of Action*, (Cairo 1994), Available from https://www.unfpa.org/sites/default/files/event-pdf/PoA_en.pdf, Article 7.2.
[100] *NARAL Pro-Choice Texas*, [website], 2018, http://prochoicetexas.org/learn-more/sex-education/, (accessed 15 June 2018).

This is non-compliant with the agenda put forth in the Program of Action. As deliberately keeping reproductive information away from the public, or misinforming them, fails to equip individuals in family planning. It also tends to create a greater opportunity for unintended pregnancies, thus increasing the demand for abortion procedures. Reaffirming the importance of access to reproductive information specifically for adolescents, was emphasized again in the *Framework of Actions: For the Follow Up of the Programme of Action*, created in 2014 at the ICPD Beyond gathering.[101]

4.2 International Court Cases

There are a number of cases brought to international court systems that have solidified substantial steps forward when it comes to a woman's reproductive freedom. This paper will focus on a select few that help to illustrate the profound impact adverse policies and attitudes have on women when they are denied the option to terminate an unwanted pregnancy.

Although these situations took place outside of the United States, they represent significant milestones in global attitudes towards abortion that will be later discussed and referred to when reviewing the intricacies of Texas and Oregon laws.

K.L. v. Peru

In 2005 the United Nations Committee on Human Rights (UNHRC), settled a case that immediately gained international attention due to its unprecedented final judgment. In 2017 Human Rights Watch (HRW) noted in their annual report that Peru faces a staggering domestic violence epidemic, resulting in the wrongful death of hundreds of

[101] United Nations, General Assembly, *Report of the Secretary General: Framework of Actions for the follow-up to the Programme of Action of the International Conference on Population and Development Beyond 2014*, A/69/62, 12 February 2014, Availble from https://www.unfpa.org/sites/default/files/pub-pdf/ICPD_beyond2014_EN.pdf (accessed 12 June 2018).

Peruvian women each year.[102] The gender-based violence routinely causes cases of unwanted pregnancy due to rape, however the country still exhibits laws which protect the unborn foetus as an entity that is entitled to protection from the state. Ergo, the monuments verdict of KL v. Peru which "...[established] that denying access to legal abortion violates women's most basic human rights." created a new dialogue for the country to consider more lenient abortion laws.[103]

The details of the case involved a seventeen-year-old Peruvian who was a survivor of rape, and unlawfully denied her right to terminate a pregnancy in lieu of verified and documented, foetal abnormalities that were determined to be fatal. Being a minor, her mother had to formally request the authorization for an abortion, but even after completing the necessary legal steps the physician refused to perform the procedure, citing:

> …[A]rticle 120 of the Criminal Code, abortion was punishable by a prison term of no more than three months when it was likely that at birth the child would suffer serious physical or mental defects, while under article 119, therapeutic abortion was permitted only when termination of the pregnancy was the only way of saving the life of the pregnant woman or avoiding serious and permanent damage to her health.[104]

The victim carried the pregnancy to term, and did eventually give birth, however the child survived less than 96 hours, and the consequent emotional trauma, as well as physical complications due to infection experienced during delivery, brought on severe, sustained mental health issues for the mother, which were eventually confirmed to fall under the definition of the aforementioned Article 119. The UNHRC established the

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[102] *Human Rights Watch World Report: Peru,* [website], 2008, https://www.hrw.org/world-report/2018/country-chapters/peru#49dda6, (accessed 5 June 2018).
[103] *Center for Reproductive Rights*, [website], 2017 https://www.reproductiverights.org/press-room/un-human-rights-committee-makes-landmark-decision-establishing-womens-right-to-access-to- , (accessed 3 June 2018).
[104] Centre for Reproductive Rights

state of Peru failed to guarantee its citizen the freedom to exercise her rights, and so the country was ordered to pay compensation.[105]

This was a landmark verdict, in that it declared the access and power of reproductive decision making is not to be dictated or overruled by medical or governmental bodies, but is a fundamental right for a woman to navigate herself. This will be discussed when we examine the growing phenomenon of bills proposed in Texas with the phrase 'foetal personhood' wherein the unborn is granted equal rights to that of the pregnant woman. Which invites the persecution for wrongful death lawsuits against the mother or physician in the event she terminated the pregnancy.[106]

Paulina del Carmen Ramírez Jacinto v. México

In 2002 a petition was filed on behalf of a 14-year-old who had been raped and was sent to the Inter-American Commission on Human Rights (IACHR). It claimed that the medical and government officials applied legal and financial pressure to the victim and her family to prevent her from terminating her pregnancy.

> Although women in Mexico do have the right to abortion in the event of rape, the law is not implemented effectively, meaning that it does not provide women with the intended protection of their rights. Because the State failed to regulate and implement the law successfully, the violation of the right to abortion is the responsibility of the State.[107]

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105 *United Nations Human Rights Office of the High Commissioner:Peru compensates woman in historic UN Human Rights abortion case*, [website], 2016, http://www.ohchr.org/EN/NewsEvents/Pages/PeruAbortionCompensation.aspx , (accessed 12 March 2018).

106 American civil Liberties Union, *Anti-Abortion "Fetal Personhood" Bill Fails in Legislature*, [website], 20 July 2017, https://www.aclu.org/news/anti-abortion-fetal-personhood-bill-fails-legislature, (accessed 25 May 2018).

107 C. O'Connell, 'Litigating Reproductive Health Rights In The Inter-American System: What Does A Winning Case Look Like?', *Health and Human Rights Journal*, vol. 16, no. 2, 2014, Available from https://www.hhrjournal.org/2014/12/litigating-reproductive-health-rights-in-the-inter-american-system-what-does-a-winning-case-look-like/ (accessed 18 May 2018).

This excerpt from an article published in the Health and Human Rights Journal (HHR), maintains that victim was unable to exercise her right, and because of this failure on the part of Mexico, the IAHRC deliberated in her favour by citing Article 126 of the Baja California Criminal Code:

> Abortion shall not be punishable: I. (…), II. (…), When the pregnancy is caused by rape (…), provided that the abortion is carried out within the first ninety days of gestation and the incident was duly reported, in which case it may be performed on the sole condition that the incident is verified by the Public Prosecution Service.[108]

This remains a landmark ruling in the region because it casts a light on the strict penalties many Central and South American countries still impose on women seeking abortion. The United States is also a signing and ratifying member of the Charter of the Organisation of the American States (OAS), therefore it should be held party to the decisions held within the IAHRC.

Tysiąc v. Poland

In 2007 the European Court of Human Rights (ECtHR) was brought a complaint against the state of Poland, after the victim had exhausted all other domestic legal avenues and remedies.[109] It claimed the state had violated a citizen's right to obtain an abortion for her own health and safety, which is allowed under the Family Planning Act of Poland.[110] Even with this policy in place it is still extremely difficult for women to be granted permission to terminate their pregnancy. This is largely due to the Act on Family Planning, Human Embryo Protection and Conditions for Lawful Pregnancy Termination,

[108] *Inter-American Commission on Human Rights*, [website], 2007, https://www.cidh.oas.org/annualrep/2007eng/Mexico161.02eng.htm, (accessed 18 May 2018).
[109] *Eurocases: Tysqic v. Poland,* [website], 2007, http://freecases.eu/Doc/CourtAct/4540146, (accessed 17 May 2018).
[110] *Global Health and Human Rights Database: Tysiąc v. Poland*, [website], 2018, http://www.globalhealthrights.org/health-topics/health-care-and-health-services/tysiac-v-poland-2/, (accessed 18 May 2018).

which is commonly referred to as the 'anti-abortion act' of 1993.[111] The court was presented with information pertaining to the woman's life-threatening condition when she discovered there were complications during her third pregnancy, which her doctor advised her to terminate in order to potentially save herself from imminent harm. The ECtHR decided that Poland had violated the woman's right to privacy and family life;

> …[I]t cannot therefore be said that, by putting in place legal remedies which make it possible to establish liability on the part of medical staff, the Polish State complied with the positive obligations to safeguard the applicant's right to respect for her private life in the context of a controversy as to whether she was entitled to a therapeutic abortion.[112]

By upholding a ruling such as this in Strasbourg, it sets the precedent for the entirety of the EU to view abortion services as a protected form of care under Article 8 of the European Convention on Human Rights (ECHR). Having an entity as respected and established as the European Union declare that abortion is a human right, puts pressure on the United States to hold itself to the same standards.

To summarize the importance of these cases to what is currently happening in Texas, we see examples of court's ruling in favour of a woman's bodily autonomy, allowing women to make reproductive decisions based on their own personal viewpoints, gender-based violence in the form of rape (and the forced pregnancy) as equated to ill-treatment, and women in lower socioeconomic situations, or belonging to minority groups not protected by their own government, resulting in taking the case to a higher court for an effective remedy. We can see a parallel in the US when cases are elevated from local and state governments, to the Supreme Court in order to produce a verdict on abortion and other reproductive rights.

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[111] V.S. Avolio, 'Rewriting Reproductive Rights: Applying Feminist Methodology to the European Court of Human Rights' Abortion Jurisprudence', *Feminists@Law*, vol. 6, no. 2, 2017, http://journals.kent.ac.uk/index.php/feministsatlaw/article/view/345/958, (accessed 5 May 2018).

[112] *Global Health and Human Rights Database: Tysiąc v. Poland*, [website], 2018, http://www.globalhealthrights.org/health-topics/health-care-and-health-services/tysiac-v-poland-2/, (accessed 18 May 2018).

5. Current Overview of Abortion Access in the United States

The standards set in 10973 by the ruling in Roe v. Wade protects women across the United States to access abortion on a federally legal level. However, recent political developments in relation to the current administration taking office has led to an expectation of that protection being overturned. Before going into further detail on how the US is currently approaching abortion access, let us return for a moment to how the American government is able to restrict international abortion access through domestic policy. This is indicative of a threat of the same policy being implemented domestically within the US in the near future.

Referring again to the Global Gag Rule (immediately reinstated by the Trump Administration on the first day in office), this action set the tone for his attitude towards women's access to abortion services, and the perceived inevitability that more restrictions will be put in place regarding family planning in the future. Human Rights Watch (HRW) estimated that in total the re-institution of this policy will detract $8.8 billion from programs around the world that rely on that money for various causes such as HIV/AIDS testing, birth control disbursement, nutrition services, treatment for tropical and infectious diseases, clean water and several other initiatives.[113]

It is also worth mentioning that this policy was prefaced by an earlier law which stipulated US funds may not be used specifically for abortion services, however the Global Gag Rule expanded on that idea by excluding financial aid to entire organizations that were in anyway connected to abortion (not even performing the procedure itself, but even groups that provided basic information to their patients). It was called the Helms Amendment, and with its passing in 1973 mandated "...[N]o foreign assistance funds may be used to pay for the performance of abortion as a method of family planning or to motivate to coerce any person to practice abortions."

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[113] 'Trump's 'Mexico City Policy' or 'Global Gag Rule'', Human Rights Watch, 14 February 2018, available from https://www.hrw.org/news/2018/02/14/trumps-mexico-city-policy-or-global-gag-rule (accessed 28 May 2018).

Subtracting US funds from programs that serve vulnerable populations based on the fact that they may also provide information, or abortion services, is an unprovoked and possibly fatal punishment on the right to health for millions of women globally, based on a single controversial aspect of the healthcare debate within US politics. Much like the reproductive bills that are passed in the US, this mandate is likely to have a deadly effect on women, and is not scientifically based on any medical evidence, but religious ideals that are deeply entrenched in US politics.

At a July 2018 conference in Detroit, Michigan a panel was discussing the harmful effects that are taking place across the globe due to the reinstitution of the Global Gag Rule. The Associate Director of Global Advocacy for Planned Parenthood mentioned that not only were the new restrictions harmful to clinics that provided abortions, but the regulations for funding meant that many clinics who did not actually preform the procedure themselves were forced to close due to insufficient funds without the help of aid from the US.[114] She further explained that although it is still a bit too early for data on maternal mortality, teenage pregnancies, and similar statistics, organizations are also anticipating a rise in communicable diseases as well. Medical facilities that had information, vaccines, treatment and provided prevention education on diseases such as Ebola[115] and Zika[116], have also been closed, leaving a large possibility that a future health epidemic could easily take place within the next few years.

A parallel piece of legislation within the US would be the Hyde Amendment. The American Civil Liberties Union (ACLU) defines it as followed:

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[114] Lecture by Caitlin Horrigan, Detroit, MI, 24 July 2018.

[115] The World Health Organization (WHO) defines the Ebola virus disease (EVD), as a severe, often fatal illness in humans, that is transmitted to people from wild animals and spreads in the human population through human-to-human transmission. The average EVD case fatality rate is around 50%. Case fatality rates have varied from 25% to 90% in past outbreaks.

[116] The WHO describes the Zika virus disease as being caused by a virus transmitted primarily by Aedes mosquitoes, with symptoms including fever, rash, conjunctivitis, muscle and joint pain, malaise or headache. However, a Zika virus infection during pregnancy can cause infants to be born with microcephaly and other congenital malformations, known as congenital Zika syndrome. Infection with Zika virus is also associated with other complications of pregnancy including preterm birth and miscarriage.

> Passed by Congress in 1976, the Hyde Amendment excludes abortion from the comprehensive health care services provided to low-income people by the federal government through Medicaid.[117]

They expand on this statement by including information that indicates there are currently 17 states that have taken steps beyond the federal government's provisions to allocate funding for women who are unable to afford it based on their financial status. To place this fact in perspective we should identify the number of Americans that are currently enrolled in Medicaid, which as of March 2017 was reported at 67,305,506.[118] This constitutes one in five citizens, or roughly 20% of the US population.[119]

The Public Affairs Manager at the non-profit healthcare centre Planned Parenthood of Greater Texas (PPGT), believes that this was a missed opportunity of second wave feminists[120] to protest and try and repeal this particular piece of legislation.[121] In our interview she explained how American women neglecting to fight this particular law eventually opened the door for more restrictive legislation in the decades to follow. Coming so quickly after abortion was made legal by the Supreme Court, she suspects that the socio-economic status of women who depended on public funds for treatment weren't able to protest and represent themselves and thus a huge population of women who could have needed abortions were swiftly excluded from accessing them. The classes of women this legislation affects the most (those in poverty, relying on federal funding for medical care), were not the same group of women that were able to protest and spend time fighting this legislation. It's important to recognize that protesting and organizing is a privilege that many women simply don't have the means to enjoy due to

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[117] *American Civil Liberties Union: Public Funding for Abortion*, [website] 2017, https://www.aclu.org/other/public-funding-abortion , (accessed 4 June 2018).
[118] *Medicaid.Gov*, [website] 2018,https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights/index.html, (accessed 3 June 2018).
[119] R. Garfield and R. Rudowitz, '10 Things to Know about Medicaid: Setting the Facts Straight', The Henry J. Kaiser Family Foundation, 12 April 2018, Available from https://www.kff.org/medicaid/issue-brief/10-things-to-know-about-medicaid-setting-the-facts-straight/ (accessed 4 June 2018).
[120] Second wave feminists are defined as emerging during the 1960-1970s, when women realized they were still not equally recognized by the law as being parallel to men.
[121] Interview with Denise Rodriguez, Dallas, TX, 16 July 2018.

their limited amount of resources and time. When the middle to upper class women failed to effectively fight this legislation it created an opening for lawmakers to build and expand on abortion restrictions.

5.1 Domestic Court Cases

Mirroring our collection of international cases to build a foundation of global standards, we will now examine the ground-breaking verdicts that helped shape the evolution of reproductive rights within the US. These cases represent instances when a woman had to challenge her own government to retain the right of bodily autonomy.

Griswold v. Connecticut

In 1965 a case was elevated to the Supreme Court in regards to the imprisonment of a medical provider named C. Lee Buxton, and a regional director of Planned Parenthood, Estelle Griswold. The pair opened a clinic that provided a patient with information and supplies to prevent pregnancy. Planned Parenthood was accused of breaking the "...statute [that made] it a crime for any person to use any drug or article to prevent conception."[122]

The judges awarded the case in favour of the applicant and cited their reasoning to the US Constitution, specifically the 14th Amendment, where by securing their liberty the state had to respect their privacy in family planning. The US Bill of Rights was also mentioned in that several amendments (I, III, IV, and V) maintain a citizen's right to bodily integrity and autonomy of their own body in regards to marital life.[123] This had a huge impact as it was now enshrined in Federal Law that medical professionals were now

[122] *Legal Information Institute: Griswold v. Connecticut*, [website], 2018, https://www.law.cornell.edu/supremecourt/text/381/479, (accessed 3 June 2018).
[123] Bill of Rights Institute, [website], 2018, http://www.billofrightsinstitute.org/founding-documents/bill-of-rights/, (accessed 5 June 2018).

able to council and provide tools for contraception, however it was only valid for married couples.

Eisenstadt v. Baird

In 1972 the Supreme Court ruled in favour of a professor, William Baird, who provided a student with a form of contraception after finishing a lesson on family planning.[124] He was arrested for distributing a tool to stop conception even though he was not a physician and therefore not legally qualified to do so, and the woman he gave it to was unmarried which was still against the law as well. This ruling again cited the portions of the US Constitution and Bill of Rights that protected one's individual liberty and privacy to dictate how they handled their own reproductive choices.

Roe v. Wade

Perhaps the most well-known court case centred around abortion access in the US, took place 45 years ago in the state of Texas. The defendant, Jane Roe, sought an abortion and during that time in the state of Texas there were only allowances for terminating a pregnancy if the mother's life was at risk. It was established that following the landmark ruling of in the United States Supreme Court from 1973, American women have been granted a constitutional right to obtain an abortion during the first trimester as they have full autonomy over their own bodies.[125] This was granted based on the protection found in the 14th Amendment to the Constitution, which the National Women's Law Centre describes as such, "The [Supreme] Court made clear that as a basic right to privacy protected by the Due Process Clause of the Fourteenth Amendment, the woman's right

[124] *Find Law: Eisenstadt V. Baird*, [website], 2018, https://caselaw.findlaw.com/us-supreme-court/405/438.html, (accessed 28 May 2018).
[125] *American Civil Liberties Union: The Roe v. Wade Era*, [website] 2017, https://www.aclu.org/other/aclu-history-roe-v-wade-era , (accessed 18 May 2018).

is *fundamental*..."[126] Holding the government to a rigid standard of respecting a woman's personal right to pursue family planning as she sees fit.

Prior to this judgment, it was estimated that over 1.2 million illegal abortions were performed each year in the US.[127] The judges incorporated this right to the Fourteenth Amendment to the United States Constitution which protected one's right to privacy. This was brought upon by the rescinding of a long-standing requirement that the procedure was only legally available when there was a significant risk to the life, or health of the mother. However, although the law stipulates that women have open access to the procedure, there are other factors that have an undeniable impact on their ability to actually exercise their right to control their reproduction.

One lingering issue with this ruling is the fact that the court failed to determine at what point a foetus is considered an individual entity. This left a window for states to declare life begins at conception, which in some circumstances places more value on the life of the unborn as opposed to what might be the best interest of the woman.[128] Foetal personhood is also prioritized in some areas of insurance coverage as well. One example would be in 2002, when under the Bush administration, medical coverage provided by the government was modified to include "a foetus from conception until birth."[129] This appears to be a generous addition to the State Children's Health Insurance Program (SCHIP), yet in practice it provided no health coverage for the woman throughout her pregnancy, or postpartum care support after she gave birth. Critics of this have observed that:

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[126] *National Women's Law Center: Roe v. Wade and the Right to Abortion*, [website], 2018, https://nwlc.org/resources/roe-v-wade-and-right-abortion/, (accessed 20 May 2018).

[127] Center for Reproductive Rights

[128] L.M. Brown, 'Symposium: Feminist Theory and the Erosion of Women's Reproductive Rights :The Implications of Fetal Personhood Laws and In Vitro Fertilization', *Journal of Gender, Social Policy and the Law*, vol. 13, no. 1, p. 91, Available from the American University Washington College of Law Database (accessed 16 June 2018).

[129] L.M. Brown, 'Symposium: Feminist Theory and the Erosion of Women's Reproductive Rights: The Implications of Fetal Personhood Laws and In Vitro Fertilization', *Journal of Gender, Social Policy and the Law*, vol. 13, no. 1, p. 97, Available from the American University Washington College of Law Database (accessed 16 June 2018).

> …[N]owhere in American law do we require some people to give of their bodies to sustain the lives of other persons. We do not even require parents to donate their organs [to] save the lives of their children. If the law insisted that pregnant women continue their pregnancies until delivery, pregnant women would be singled out for a legal responsibility that no one else must assume. And that is something the US Constitution does address. The Equal Protection Clause protects people from being treated differently than other people.[130]

This statement comes from Professor Judith Jarvis Thompson, who argues that there is no place to argue life begins at conception, when there is still full dependency on the mother until foetal viability.

Planned Parenthood Association v. The Department of Human Resources of the State of Oregon

This case was first submitted in 1983 and decided a year later in 1984. The complaint was against an administrative rule in which funds were being denied to abortion patients. Planned Parenthood argued women were not being treated equally under the law in regards to abortion access, and their right to privacy was violated as well. This was based on Article I, section 20 of the Oregon Constitution which reads as follows "Equality of Privileges and immunities of citizens: No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens."[131]

This was in retaliation to the Hyde Amendment, that mandates no federal funding shall be used in regards to abortion. Oregon's Emergency Board was using this legislation to refuse repayment of abortion procedures; however, they overstepped their jurisdiction

[130] D. Orentlicher, 'Abortion and the Fetal Personhood Fallacy', Bill of Health: Examining the Intersection of Law and Health care, biotech and bioethics, [web blog], 11 August 2014, http://blogs.harvard.edu/billofhealth/2015/08/11/abortion-and-the-fetal-personhood-fallacy/, (accessed 10 June 2018).

[131] *Oregon State Legislature: Oregon Constitution*, [website], 2017, https://www.oregonlegislature.gov/bills_laws/Pages/OrConst.aspx, (accessed 5 June 2018).

when they refused to pay for 'medically necessary' abortion procedures and so the court decided they must help with these situations moving forward. It was a monumental verdict due to the fact that although the federal government suggested it was legal to deny funding for abortion procedures, the state of Oregon reaffirmed that they would commit to assist their citizens with specific safeguards to financing abortion.[132]

Planned Parenthood of South-eastern Pennsylvania v. Casey

After the Supreme Court's decision in Roe v. Wade, they were once again brought a similar case nearly twenty years later, in 1992, that dealt with the topic of abortion accessibility. In this case the term 'undue burden' was first established in regards to reproductive health regulations.[133] It was concerning a Pennsylvania state law that required a woman to first gain written consent from her husband before being granted access to the procedure.

> In determining the burden imposed by the challenged regulation, the Court inquires whether the regulation's purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion…[134]

The Supreme Court invalidated the requirement, citing that it was not medically necessary to inform your partner and it only served to create an obstacle for women and threatened their liberty in pursuing their sexual health. From this case to 2018, state level legislation proposed in order to further regulate either abortion providers, their clinics, or patient requirements are blocked if they are found to create an 'undue burden' on the woman. This will be discussed with more detail in Chapter 5.2 that focuses solely on TRAP laws.

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[132] NARAL Pro-choice America: State Law Oregon, [website], 2018, https://www.prochoiceamerica.org/state-law/oregon/, (accessed 13 June 2018).
[133] *Cornell Law School: Legal Information Institute*, [website], 2017, https://www.law.cornell.edu/supremecourt/text/505/833 , (accessed 3 June 2018).
[134] Cornell Law School: Legal Information Institute.

Whole Woman's Health v. Hellerstedt

This case is relevant to this research, due to the fact that the events described occur yet again in Texas, illustrating a clear pattern of state legislature attempts to deny women access to comprehensive reproductive health services. After the passing of House Bill 2 (HB2) in 2013, an abortion clinic in Texas petitioned against the Commissioner for the Department of State Health Services, John Hellerstedt.[135] During 2016 in the case of Whole Woman's Health v. Hellerstedt, the United States Supreme Court found in favour of the providers, Whole Women's Health, due to the aforementioned case of Planned Parenthood of South-eastern Pennsylvania v. Casey. As stated earlier that case provided the foundation of an abortion bill to be overturned if it was found to cause an 'undue burden' on the patient.[136] Essentially stating that the woman was subjected to unnecessary stipulations that were put in place to deter her from seeking out abortion care. Two aspects of the legislation that were blocked, included the requirement of an Ambulatory Surgical Centre (ASC), and the need for a physician to have an agreement with a local hospital in order to send patients there in the event of a complication.

Gaining admitting privileges with a hospital is difficult, specifically because a physician needs to agree to send a minimum number of patients there per year, which abortion providers frequently fall short of the quota due to the safety of the procedure. It is also easy and common practice to send a patient to the emergency room in any scenario, whether or not the physician has a contract with a hospital. These laws are damaging to providers operating in states where a majority of the population identifies themselves as pro-life, because personnel working at the local hospital are in no way professionally obligated to cooperate with abortion clinics or partner with their physicians. Resulting in admitting privileges being denied to the doctors, which in turn forces them to close their clinic.

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135 '*Whole Woman's Health v. Hellerstedt*', [website], https://www.oyez.org/cases/2015/15-274 . (accessed 14 June 2018).
136 '*Whole Woman's Health v. Hellerstedt*', [website], https://www.oyez.org/cases/2015/15-274 . (accessed 14 June 2018).

The cases decided at the United States Supreme Court have recently come into the spotlight, as one of the sitting judges, Justice Anthony Kennedy, announced his retirement in the Summer of 2018.[137] His absence opens up an opportunity for the current administration to choose his replacement which is anticipated to threaten the already fragile standing of abortion access across the US. The President's current nomination of Brett Kavanaugh, is widely seen as an inevitable end to the protection provided by Roe v. Wade. "He was handpicked to fill the Supreme Court vacancy from a list drafted by ani-choice special interest groups. Kavanaugh has spent his career as a Washington political operative, pushing for gutting the protections of Roe v. Wade."[138] This description by a respected news outlet, The Hill, explains the danger women face if Kavanaugh is approved to become a Supreme Court Justice. Until the next justice is sworn in however, the United States is still obligated to adhere to the judgments found across these prominent domestic trials.

5.2 Targeted Regulation of Abortion Providers (TRAP) Laws

TRAP laws have become prevalent in the Southern region of the US since 2010. Several states in the region have rapidly implemented legislation that uniquely applies only to abortion clinics. In a recent documentary film entitled *Trapped,* released in 2016, a lawyer was interviewed from the Centre for Reproductive Rights who stated that in the last three years over 250 abortion restrictions were adopted by multiple states within the US. This accounts for just below a quarter of total abortion legislation since the verdict of Roe v. Wade.[139]

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[137] J. Fabian and L. Wheeler, 'Trump taps Brett Kavanaugh to succeed Kennedy on Supreme Court', *The Hill*, 9 July 2018, available from http://thehill.com/regulation/court-battles/394688-trump-taps-brett-kavanaugh-to-succeed-kennedy-on-supreme-court (accessed 16 July 2018).
[138] S. Phadke, 'American women need to see the full paper trail of Brett Kavanaugh', *The Hill*, 30 July 2018, available from http://thehill.com/opinion/judiciary/399498-american-women-need-to-see-the-full-paper-trail-of-brett-kavanaugh (accessed 31 July 2018).
[139] *Trapped*, dir. Dawn Porter, USA, Trilogy Films, LLC, 2016 [webstream].

Although seven out of ten Americans believe abortion should be safe and legal, this trend of introducing more restrictive laws aimed at providers and clinics has already closed a number of offices throughout the US.[140] This makes the volume of patients seeking treatment increase significantly for the few remaining clinics who are straining to meet the demand. After the aforementioned passing of HB2 in the state of Texas in 2013, the requirements it dictated to the facilities were expensive and, in some cases, impossible to comply with, which as a direct result forced over half of the remaining 41 abortion providers in Texas to close their doors.[141]

Legislation that passes in order to enforce additional measures onto abortion clinics or their providers, are labelled TRAP laws because they are seen to intentionally put these selected medical institutions and their staff in circumstances where they are unable to comply and thus must close their practice:

> For example, some TRAP laws require that abortions be performed in far more complicated and expensive facilities than are necessary to ensure the provision of safe procedures, such as in ambulatory surgical facilities. Compliance with these requirements may require costly and unnecessary facility modifications, which may not even be feasible in existing facilities, or impose unnecessary staffing requirements that are expensive or impossible to meet.[142]

The information these laws stem from are a combination of political and social actors, yet almost all of the regulations set forth in these bills have little or no medical research or evidence to support them. Physicians, obstetrics and gynaecologists (OB-GYNs), psychologists or other mental health experts are rarely consulted in the construction of these proposals, which would suggest that there is little to no medical benefit for the patient to have the provider change protocol and adhere to additional regulations.

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[140] *NARAL Pro-Choice Oregon: Abortion Access*, [website], 2018, https://prochoiceoregon.org/issue/abortion-access/ (accessed 20 July 2018).

[141] C. Gerdts, 'Impact of Clinic Closures on Women Obtaining Abortion Services After Implementation of a Restrictive Law in Texas', *American Journal of Public Health*, vol. 106, no. 5, 2016, p. 857, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4985084/ , (accessed 16 May 2018).

[142] 'Targeted Regulation of Abortion Providers (TRAP)', Centre for Reproductive Rights, [website], 2018, https://www.reproductiverights.org/project/targeted-regulation-of-abortion-providers-trap (accessed 2 July 2018).

The Centre for Disease Control (CDC) states on their website that the rate of abortion peaked in the early 1990s but has steadily decreased since then, and informs the public that the procedure has over a 99% success rate which is statistically safer than receiving a penicillin shot.[143]

Table 2: Complications due to Induced Termination of Pregnancy 2015[144]

None	52,938
Shock	0
Uterine Perforation	2
Cervical Laceration	2
Haemorrhage	10
Aspiration/Allergic Response	0
Infection/Sepsis	5
Infant(s) Born Alive	0
Death of a Mother	0
Other	6
Not Stated	1,347

Table 2 shows that in 2015 the state of Texas reported there were few complications throughout almost 60,000 procedures occurring during that year.[145] With this information at hand, terminating a pregnancy clearly presents a very low risk to the woman involved, which would make any further measures to ensure their safety unwarranted. This provides a strong indication that these laws are in fact created with the end goal of eliminating a woman's access to abortion services. As concluded by feminist

[143]Centres for Disease Control and Prevention
[144] *Texas Department of State Health Services*, [website], 2018, https://www.dshs.texas.gov/ , (accessed 16 May 2018).
[145]*Texas Department of State Health Services*, [website], 2018, https://www.dshs.texas.gov/ , (accessed 16 May 2018).

political philosophers, such laws are being made to control the actions of women in regards to their bodily autonomy for their 'own good.'

There are different versions of TRAP bills that are proposed every year and a significant number make it through the process of being adopted as a law. The top ten states with the most restrictive laws are Iowa (they recently enacted a bill to ban any form of abortion if a heartbeat is detected)[146], Mississippi, Arkansas, South Dakota, Louisiana, Missouri, Kentucky, Utah, Nebraska, and North Dakota.[147] Some more benign forms of TRAP laws include requiring certain informational pamphlets to be distributed before undertaking the procedure, and requiring that the facilities (outpatient clinics are where a majority of abortions are performed as opposed to fully functioning hospitals) have the necessary equipment in case of a medical emergency occurring on their premise.

However, TRAP regulations stray into questionable territory when they demand the size of closet doors, the lighting to be used within the clinic, the measurements of the operating room, extended waiting periods, and some states even obligate doctors and clinicians to verbally present incorrect information to their clients (cases like this can be found in Alabama where they are forced by law to inform the patient that an abortion increases your risk of breast cancer, even though there has never been any medical research to support that claim).[148] A similar law that went into effect in another restrictive state, South Dakota, mandated that the physicians must tell their patients:

> [T]hat the woman has "an existing relationship" with the foetus that is protected by the U.S. Constitution and that "her existing constitutional rights with regards to that relationship will be terminated." Also, the doctor is required to say that "abortion increases the risk of suicide ideation and suicide. The message must be delivered no earlier than

[146] C. Hardy, 'Which state has passed the most restrictive abortion ban in the US?', *Euronews*, 5 February 2018, available from http://www.euronews.com/2018/05/02/which-state-has-passed-the-most-restrictive-abortion-ban-in-the-us- (accessed 16 July 2018).
[147] 'Abortion: 19 states with toughest laws,' *CBS News*, 2018, available from https://www.cbsnews.com/pictures/abortion-19-states-with-toughest-laws/12/ (accessed 16 July 2018).
[148] *Trapped*, dir. Dawn Porter, USA, Trilogy Films, LLC, 2016 [webstream].

> two hours before the procedure. The woman must say in writing that she understands.[149]

These are falsified claims as there has never been any scientific study that has shown a correlation between suicidal tendencies from women who have obtained an abortion. This is a tactic used to dissuade patients from seeking medical treatment, and one not created or deemed necessary by medical staff or professionals, but instead anti-choice politicians.

A similar situation can be noted when minors are made to receive written, legal consent to terminate a pregnancy. If they are unable or unwilling to get this written consent from their parent or guardian, they may choose to face a judge and apply for a judicial bypass. This has no medical bearing, and it has been statistically proven that women (not specifically minors) are 14 times more likely to perish from complications due to giving birth, than having an abortion.[150] The motivation behind passing legislation requiring consent forms is meant to embarrass, and shame women and girls from gaining medical assistance. The need for spousal consent is also problematic when women are faced with an abusive partner who may not want to involve in their decision to terminate a pregnancy for fear of violent repercussions.

New and detailed regulations are not being introduced to similar medical institutions (cardiac clinics, and other outpatient medical centres). These laws are being targeted at abortion providers in order to end access to the procedure entirely.

A qualitative study focused in the state of North Carolina stated that "TRAP laws frequently mandate actions and speech outside the boundaries of standard clinical care, including medically unnecessary waiting periods, ultrasound requirements, and scripted

[149]P. Slevin, 'Ruling Gives South Dakota Doctors a Script to Read', *The Washington Post*, 20 July 2018, available from http://www.washingtonpost.com/wp-dyn/content/article/2008/07/19/AR2008071901586.html (accessed 25 July 2018).
[150] G. Pittman, 'Abortion safer than giving birth: study', *Reuters*, 23 January 2012, available from https://www.reuters.com/article/us-abortion/abortion-safer-than-giving-birth-study-idUSTRE80M2BS20120123 (accessed 12 July 2018).

counselling."[151] In the most severe cases, politicians have written into legislation the option to appoint a lawyer to represent the foetus in court in the case of a minor seeking to end her pregnancy.[152] Former Texas Governor, Rick Perry, announced that by signing TRAP bills into law his goal was to "...make abortion a thing of the past."[153]

Figure 1 (see appendix) which can be found on the Guttmacher Institute's website, illustrates the range of laws that are placed on centres that provide abortion services.[154] They are not enacted in all fifty states, and there can be a myriad of combinations in which aspects the states choose to adopt. By studying this chart, one can see that Mississippi is at the forefront of adopting TRAP legislation, whereas Florida and North Dakota are only mildly restrictive in comparison.

The platform used to argue in favour of passing TRAP laws, is that they are in the best interest of the woman and protects her from a possibly dangerous and life-threatening procedure. By suggesting that politicians know what's in a 'woman's best interest' more so than herself and her doctor, is an example of how liberal feminists would take issue with a woman not begin given enough credit to make her own reproductive decisions. In all reality the complications and risks of an abortion are greater than giving birth, and as we have seen earlier the risk of complications are extremely low. The point at which it becomes threatening to the well-being of the woman, is when she attempts to terminate her pregnancy by her own means and resources, without the help of medical professionals. Which we have been seeing an increase in since 2010 when this legislation first began to make headway and caused clinics to close their doors. In fact, between

[151]R.J. Mercier, 'The experiences and adaptations of abortion providers practicing under a new TRAP law: a qualitative study', *Contraception*, vol. 9, no. 6, 2015, p 509. http://www.contraceptionjournal.org/article/S0010-7824(15)00096-7/fulltext , (accessed 18 May 2018).
[152]L. Bushak, *Medical Daily*, [website], 2015, http://www.medicaldaily.com/pulse/alabama-law-allows-lawyers-defend-fetuses-during-abortion-trials-318238 ,(accessed 11 April 2018).
[153] *Trapped*, dir. Dawn Porter, USA, Trilogy Films, LLC, 2016 [webstream].
[154]*Guttmacher Institute: Targeted Regulation of Abortion Providers, [website], 2018, https://www.guttmacher.org/state-policy/explore/targeted-regulation-abortion-providers, (accessed 20 July 2018).*

2010 and 2016, there were a total of 288 abortion restrictions passed, which accounts for 27% of total legislation since Roe v. Wade over 40 years ago.[155]

The end result of a state adopting TRAP laws is a rapid closure of clinics providing abortion services, which in turn creates an unprecedented volume of patients seeking care at the few remaining medical centres. This causes not only additional financial strain on women, but could extend the time frame for her appointment. This is significant as patients that are post 20 weeks fertilization are often denied access to abortion services and left to decide to go out of state to pursue the procedure, or seek illegal and unsafe methods. This is assuming that women have the means to pursue other options for care. That is, a factor which complicate a woman's ability to seek abortion services from a distantly (perhaps out of state) located clinic include: being able to take time off work; owning a car to drive the distance or being able to afford a bus, train or even plane ticket to the clinic; finding appropriate childcare (if the woman is already a mother); having the finances to pay for a hotel since restrictive clinics have a mandatory waiting period that can be up to three days; and lastly being able to pay for the procedure itself which ranges from $500-$4,000 depending on if the patient has insurance coverage or not which will cover the procedure.[156]

[155] *Guttmacher Institute: Last Five Years Account for More Than One-quarter of All Abortion Restrictions Enacted Since Roe*, [website], 2016, https://www.guttmacher.org/article/2016/01/last-five-years-account-more-one-quarter-all-abortion-restrictions-enacted-roe (accessed 20 July 2018).
[156] *Clear Health Costs: How much does an abortion cost?,* [website], 2014, https://clearhealthcosts.com/blog/2014/06/much-abortion-cost-draft-theresas/ (accessed 20 July 2018).

6. State Profiles: Oregon and Texas

Although these states belong to the same country, there are many different factors to consider when comparing the legislation that each have passed. Some of the most prominent differences between the two involve the rate of illegal immigration, and the degree to which religion influence politics throughout the population.

6.1 Population Demographics

The current populations of Texas and Oregon reflect vast differences in the total land size of each state. The United States Census labels Texas as the 2nd most populated state with the total population currently at 28,304,506.[157] Whereas the total number of people living in Oregon is a considerably smaller figure, at 4,142,776, making it the 27th most populated state in the nation.[158] Overall the total population of the United States is estimated at 328,094,000, and we can see that Texas accounts for just over one tenth.

The ratio of women to men in each state is almost identical, with Texas at 50.3%, and Oregon at 50.4%.[159] That equates to roughly 14 million total women living in Texas and 2 million residing in Oregon. Within that group we can narrow it down to women of reproductive age which is defined by the WHO as females between 15-44.[160] Out of the estimated 14 million women living in Texas there are 41.6% or nearly 6 million women that are within the reproductive age window, compared to 38.6% of the 2 million women living in Oregon (or 800,000).[161] Here we see the potential for more Texas women having their reproductive rights restricted.

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[157] *United States Census Bureau: Quick Facts,* [website], 2018, https://www.census.gov/quickfacts/geo/chart/tx,or,US/PST045217, (accessed 20 July 2018).
[158] *United States Census Bureau: Quick Facts,* [website], 2018, https://www.census.gov/quickfacts/geo/chart/tx,or,US/PST045217, (accessed 20 July 2018).
[159] *United States Census Bureau: Quick Facts,* [website], 2018, https://www.census.gov/quickfacts/geo/chart/tx,or,US/PST045217, (accessed 20 July 2018).
[160] *World Health Organization: Women's Health*, [website], 2017, http://www.who.int/mediacentre/factsheets/fs334/en/ , (accessed 2 June 2018).
[161] *United States Census Bureau: Quick Facts,* [website], 2018, https://www.census.gov/quickfacts/geo/chart/tx,or,US/PST045217, (accessed 20 July 2018).

Taking a closer look at the different age groups within a woman's reproductive years, there are several trends between Oregon, Texas and the rest of the United States (see Table 3).

Table 3: Abortion Distribution by Age Group 2013[162]

Age	Oregon	Texas	United States
<15	.2%	0.32%	0.3%
15-19	12%	11.06%	11.4%
20-24	31.3%	32.05%	32.7%
25-29	26.1%	26.6%	25.9%
30-34	17.1%	16.94%	16.8%
35-39	9.6%	9.53%	9.2%
40+	3.7%	3.49%	3.6%

On the whole, Texas and Oregon are on par with the rest of the country in terms of terminating pregnancies by age group. Women in their twenties and thirties have higher rates when compared to teenagers or women who are at the end of their reproductive years.

Because minorities are often left with less access to services and facilities, it is also helpful to compare differences in racial demographics.

[162] *Induced abortions by race/ethnicity, marital status and age, Oregon occurrence, 2013*, [website], 2013, https://www.oregon.gov/OHA/PH/BIRTHDEATHCERTIFICATES/VITALSTATISTICS/ANNUALREPORTS/VOLUME1/Documents/2013/Table0303.pdf, (accessed 20 July 2018).

Table 4: Racial Demographics of Oregon and Texas 2010

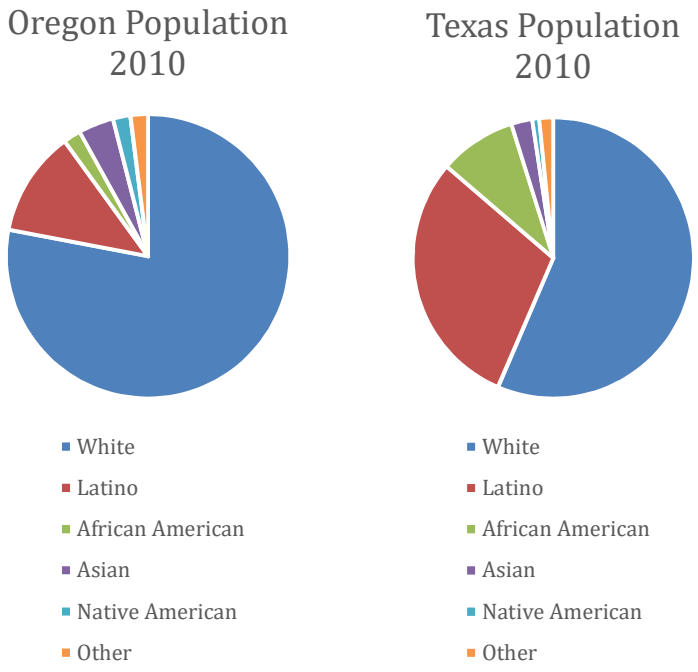

Table 4 represents data from the 2010 US Census, for the racial demographics of Oregon[163] and Texas.[164] The CDC reported that "[W]hite women account for about 36% of abortions; Black women 30%, Hispanic women 25%, and women of other races 9%."[165] The next census will be conducted in 2020, and will likely show significant changes for Texas. For example, it has been estimated that by 2022 the Hispanic population will become the largest group within Texas, increasing by almost 2 million in the past ten years.[166]

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[163] *Statistical Atlas: Race and Ethnicity in Oregon*, [website], 2018, https://statisticalatlas.com/state/Oregon/Race-and-Ethnicity (accessed 22 June 2018).
[164] *Suburban Stats: Current Population Demographics and Statistics for Texas by age, gender and race*, [website], 2018, https://suburbanstats.org/population/how-many-people-live-in-texas (accessed 22 June 2018).
[165] 'US Abortion Rates and Related Information', Our Bodies, Our Selves, 22 March 2014, available from https://www.ourbodiesourselves.org/book-excerpts/health-article/u-s-abortion-rates/ (accessed 20 June 2018).
[166] N. Ahmed, and A. Ura, 'Hispanic Texans on pace to become largest population group in state by 2022', The Texas Tribune, 21 June 2018, available from https://www.texastribune.org/2018/06/21/hispanic-texans-pace-become-biggest-population-group-state-2022/ (accessed 22 June 2018).

In 2017 the highest rates of poverty in Oregon and Texas both occurred among the African American, Latino, and Native American communities.[167] Nationally in 2008 42% of women who had an abortion were living below the federal poverty level, which was a considerable jump from 27% in 2000.[168] The percentage of people that had no health insurance was 31% of the population in Texas and 11% in Oregon, and the teen pregnancy rate had Texas ranked as the 47th highest in the nation, where Oregon came in at number 20.[169]

The CDC estimated that between 2014 and 2015, the overall national rate of abortion decreased by -2.24%, falling to 906,369 women from a previous total of 926,240.[170] Oregon reported a total of 8,231 procedures in 2014, and in 2015 there were 8,610 total abortions.[171] This shows an increase of 4.6%, which is inconsistent with the national trend, however it follows the same path as Texas. The figures for Texas show 54,902 pregnancy terminations in 2014, increasing by a fraction 0.7% to 55,287 in 2015.[172] Researchers attribute this to one of two things: 1) easier availability to birth control for women (due in large part to the introduction of the Affordable Care Act), or 2) the recent wave of TRAP laws left fewer attainable options for abortion care, thus women were not able access the procedure. In 2016, Oregon removed a barrier to birth control, by allowing pharmacists the ability to prescribe and distribute contraceptives without the patient first needing to visit a physician.[173]

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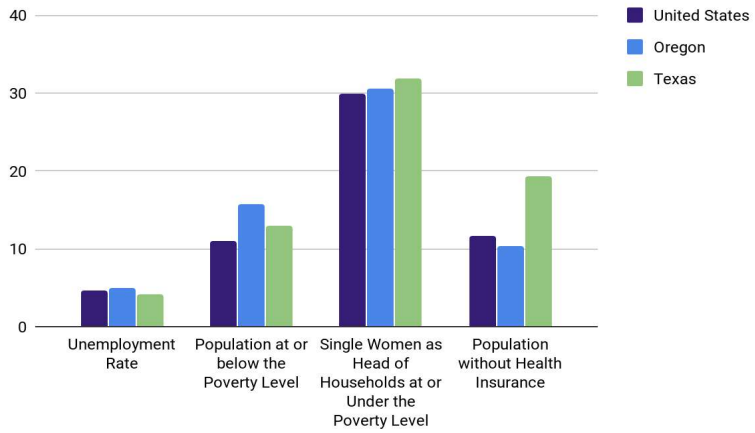
[167] 'Talk Poverty: Texas 2017', [website], 2018, available from https://talkpoverty.org/state-year-report/texas-2017-report/ (accessed 18 June 2018).
[168] L. Finer, R. Jones, and S. Singh, 'Characteristics of US Abortion Patients, 2008', The Guttmacher Institute, May 2010, available from https://www.guttmacher.org/report/characteristics-us-abortion-patients-2008 (accessed 16 June 2018).
[169] 'Talk Poverty: Oregon 2017', [website], 2018, available from https://talkpoverty.org/state-year-report/oregon-2017-report/ (accessed 18 June 2018).
[170] Centres for Disease Control and Prevention
[171] *Induced abortions by race/ethnicity, marital status and age, Oregon occurrence, 2013*, [website], 2013, https://www.oregon.gov/OHA/PH/BIRTHDEATHCERTIFICATES/VITALSTATISTICS/ANNUALREPORTS/VOLUME1/Documents/2013/Table0303.pdf, (accessed 20 July 2018).
[172] Texas Department of State Health Services
[173] L. Geggel, 'New Oregon Law Allows Pharmacists to Prescribe Birth Control Pills', Live Science, 4 January 2016, available from https://www.livescience.com/53256-oregon-birth-control.html (accessed 20 June 2018).

The majority of women who seek to exercise their reproductive rights by terminating an unwanted pregnancy are, in most cases, mothers already. The statistical report from the TDHS reported that in 2015 over 62% of women who sought out an abortion had already had one or more live births.[174] Which brings into consideration the economics of abortion access. A majority of women who seek reproductive care in Texas fall either at, or below, the federal poverty line. Nationally, the poverty line is $12,140 for an individual, or $25,100 for an average family of four.[175] The following table compares some vital information when considering the financial circumstances that surround abortion.

Table 5: Population Statistics of Common Factors in Abortion Rates[176]



As illustrated by Table 5, it is noticeable that Oregon has a significantly higher proportion of persons living in poverty and higher unemployment rate when compared to Texas or the national average. Texas, on the other hand, shows almost twice the amount of people without health insurance, which is a large financial component to consider when faced with an unwanted pregnancy. The costs for an abortion vary due to if the individual has

[174] Texas Department of State Health Services
[175] *Healthcare.Gov: Federal Poverty Level*, [website], 2018, https://www.healthcare.gov/glossary/federal-poverty-level-FPL/ , (accessed 21 May 2018).
[176] *United States Census Bureau*, [website] 2018, https://www.census.gov/popclock/ , (accessed 3 June 2018).

insurance coverage or not, and how much their insurance provider will cover. As of 2017, the average cost for a vaginal delivery in Texas was $7,349 and Oregon's average was lower at $6,565. The cost could also vary depending on if you delivered via caesarean section which would cost an average of $10,575 in Texas and $9,624 in Oregon.[177]

Utilizing these figures as a base for annual incomes, we can compare them with current estimate for an abortion in the US which can cost up to $1,500 based on whether or not you have insurance coverage.[178] This constitutes a significant amount of money, and contributes to women facing the reality of being unable to afford professional care, or attempting to terminate their pregnancy using illegal and dangerously unsafe methods.

A study conducted in 2015 by researchers affiliated with the University of Texas at Austin, discovered that following the introduction of stricter laws an estimated 240,000 women in Texas had attempted to perform a self-induced abortion.[179] One of the researchers involved in the project was Dr. Daniel Grossman, a prominent Professor in the Department of Obstetrics, Gynaecology and Reproductive Sciences at the University of California in San Francisco. His comments regarding the results of the study were as follows:

> This is the latest body of evidence demonstrating the negative implications of laws like HB2 that pretend to protect women but in reality, place them, and particularly women of colour and economically disadvantaged women, at significant risk. As clinic-based care becomes harder to access in Texas, we can expect more women to feel that they have no other option and take matters into their own hands.[180]

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[177] E. O'brien and P. Rebala, ' Find Out How Much It Costs to Give Birth in Every State', *Money*, 30 October 2017, available from http://time.com/money/4995922/how-much-costs-give-birth-state/ (accessed 26 May 2018).
[178] *Planned Parenthood: How do I get an in clinic abortion?,* [website], 2017, https://www.plannedparenthood.org/learn/abortion/in-clinic-abortion-procedures/how-do-i-get-an-in-clinic-abortion , (accessed 28 May 2018).
[179] *University of Texas at Austin: Texas Policy Evaluation Project,* [website], 2018, https://liberalarts.utexas.edu/txpep/about.php, (accessed 20 July 2018).
[180] *University of Texas at Austin: Texas Policy Evaluation Project,* [website], 2018, https://liberalarts.utexas.edu/txpep/about.php, (accessed 20 July 2018).

Another difference worth noting between these two states is due to their geographical location, Texas shares a border of 1,254 miles (2,018 km) with Mexico and is therefore more active when it comes to immigration.[181] Breaking down the ethnicities of each state shows another aspect of how abortion access and healthcare in general are unequally distributed among minorities. A researcher from the Guttmacher Institute found that:

> In 2014, some 55,230 abortions were provided in Texas, though not all abortions that occurred in Texas were provided to state residents, as some patients may have travelled from other states; likewise, some individuals from Texas may have travelled to another state for an abortion. There was a 28% decline in the abortion rate in Texas between 2011 and 2014, from 13.5 to 9.8 abortions per 1,000 women of reproductive age. Abortions in Texas represent 6.0% of all abortions in the United States.[182]

This brings to attention the fact that women from outside state lines may be trying to access services due to restrictions in their home state. The states that border Texas include New Mexico, Arkansas, Oklahoma and Louisiana, all of which have strict TRAP laws in effect as well. However, the distance travelled to access services in Texas may be shorter than travelling to one of the few clinics found in those four states, so providers in the state of Texas may see patients who have travelled across the border.

Another factor that differs the populations between Texas and Oregon, are the rates of immigration. This includes both legal and illegal persons estimated to be living in each state. The United States is currently facing international backlash aimed at the policies being used to process people who cross the border illegally. As of October 2017, the Federation for Immigration Reform (FAIR) estimated that there were a total of 12.5

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[181] 'Texas-Mexico Border Crossings', *Texas Department of Transportation*, [website], 2018, https://www.txdot.gov/inside-txdot/projects/studies/statewide/border-crossing.html (accessed 25 July 2018).

[182] R.K. Jones, 'Abortion Incidence and Service Availability In the United States, 2014', *Perspectives on Sexual and Reproductive Health*, vol. 49, no. 1, 2017, p. 3, https://www.guttmacher.org/sites/default/files/article_files/abortion-incidence-us.pdf , (accessed 18 May 2018).

million illegal immigrants in the United States.[183] If we narrow that down by state 1,470,000 reside in Texas, and 116,000 live in Oregon.[184] The Migration Policy Institute (MPI) reported that of the 80,000 illegal immigrants in Oregon between the ages of 15-45 (the WHO's parameters for reproductive age), 44% of them were female which leaves 35,200 women with an additional barrier to seek contraception, abortion and other care.[185] The same population of undocumented women of reproductive age is estimated to be 441,600 (this represents the 46% female population of illegal immigrants between ages 15-45).[186] Unfortunately this population often fears seeking medical care because there is a possibility the authorities will be alerted and they may be detained or even deported.[187]

A prominent healthcare non-profit, Planned Parenthood, has a stated mission to provide 'care no matter what.'[188] This progressive form of sexual and reproductive care is available for any patient, regardless of their citizenship status or ability to pay. The Public Affairs Manager from Planned Parenthood of Greater Texas (PPGT) explained that clinic staff have a protocol for how to protect the privacy and rights of their patients in the event someone they were treating is targeted by the authorities while in their care. She also mentioned that the healthcare centres she oversees in Texas, noticed a sharp rise in 'no show' appointments once ICE (Immigration and Customs Enforcement) officers were reportedly waiting to deport people outside of hospitals and other medical facilities.

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[183] *Federation for American Immigration Reform: How Many Illegal Aliens are in the US?*, [website], 2018, https://www.fairus.org/issue/illegal-immigration/how-many-illegal-immigrants-are-in-us, (accessed 20 May 2018).

[184] *Migration Policy Institute: Unauthorized Immigrant Populations Profiles*, [website], 2018, https://www.migrationpolicy.org/programs/us-immigration-policy-program-data-hub/unauthorized-immigrant-population-profiles, (accessed 20 July 2018).

[185] *Migration Policy Institute: Unauthorized Immigrant Populations Profile Oregon*, [website], 2018, https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/OR, (accessed 20 July 2018).

[186] *Migration Policy Institute: Unauthorized Immigrant Populations Profile Oregon*, [website], 2018, https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/OR, (accessed 20 July 2018).

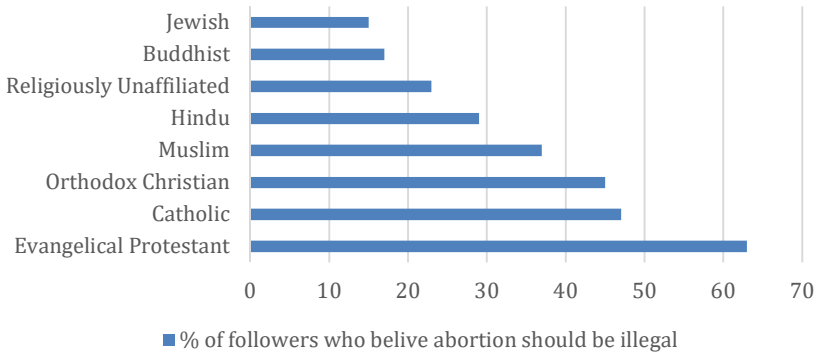
[187] J. Deam, and I. Najarro, 'Fearing deportation, undocumented immigrants in Houston are avoiding hospitals and clinics', *The Houston Chronicle,* 27 December 2017, available from https://www.houstonchronicle.com/news/houston-texas/houston/article/Fearing-deportation-undocumented-immigrants-are-12450772.php (accessed 20 July 2018).

[188] *Planned Parenthood Federation of America*, [website], 2018, https://www.plannedparenthood.org/, (accessed 20 July 2018).

This scenario has also appeared in Oregon since President Trump took office in 2016. In October 2017, a reporter for the Willamette Week, a popular newspaper in Oregon, wrote a story that exposed ICE for violating its own code of conduct in regards to avoiding confrontations in *sensitive spaces* by arresting a patient on a hospital campus in Portland.[189] Deterrents like this are becoming more and more reported in the press since President Trump has taken office, and attempted to enact his campaign promise to end illegal immigration.

Finally, an important component to recognise in the abortion debate is the role that religion plays. Texas is the anchor of the *bible belt*, a term used to describe the high density of Christians living in the Southern United States, and because of this state policies tend to be more conservative and adhere to religious beliefs instead of medical necessity. In Table 6 we can see Pew Research Centre data regarding views on abortion according to different religious groups in the US.

Table 6: Percent of Religious Followers that Believe Abortion should Be Illegal[190]



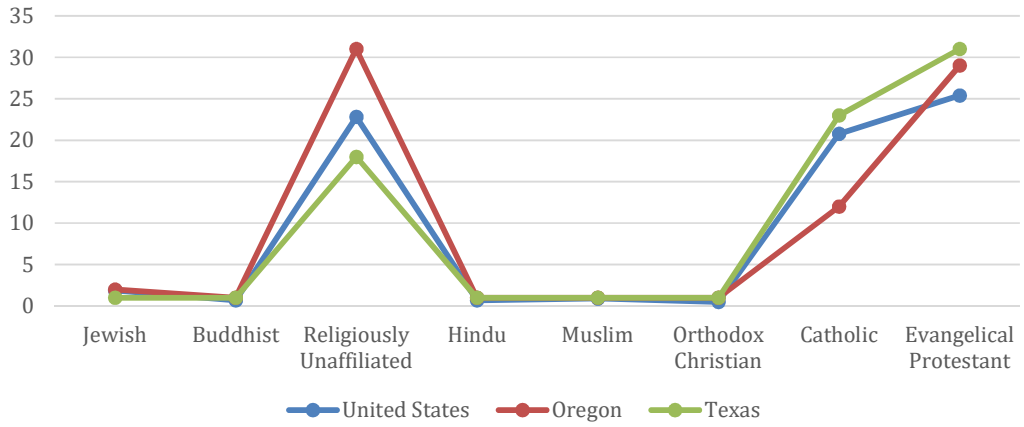
It is worth noting that Evangelical Protestants are a large sect of the Christian Church. These statistics are helpful in showing that the largest opponent of safe and legal abortion

[189] K. Shepherd, 'Ice Arrested an Undocumented Immigrant Just Outside a Portland Hospital', Willamette Week, 31 October 2017, Availible from http://www.wweek.com/news/courts/2017/10/31/ice-arrested-an-undocumented-immigrant-just-outside-a-portland-hospital/ (accessed 20 July 2018).
[190] *Pew Research Centre: Religious Landscape Study,* [website], 2018, available from http://www.pewforum.org/religious-landscape-study/views-about-abortion/ (accessed 18 June 2018).

within the religious community identify as Evangelicals, with a total of 63% in favour of banning the procedure and making it completely illegal within the US. This table also represents that Eastern religions are perhaps a bit more lenient when it comes to ending unwanted pregnancies.

When we pair these statistics with the number of religious followers living in both Oregon and Texas, we can gain a greater understanding of the impact they have on society's view of abortion, which often leads them to vote in officials who create and pass legislation regarding access and affordability of the procedure. Below, in Table 7 are figures gathered in 2014 from the *Religious Landscape Study*, that questioned over 35,000 Americans from all fifty states about their religious identities.[191]

Table 7: Religious Landscape of Adults 2014



Data correlating the US national average, to the averages of Oregon and Texas seems to be nearly identical in a few of the categories (i.e. people who identified as Jewish, Buddhist, Hindu, Muslim and Orthodox Christian showed no large outliers). Rates of Evangelical Protestants is somewhat similar with the US overall having 25.4%, Oregon at 29% and Texas with almost 6% higher than national average at 31%. The largest indicator to abortion legality seems to be the rate of people who identify themselves as

[191] *Pew Research Centre: Religious Landscape Study,* [website], 2018, available from http://www.pewforum.org/religious-landscape-study/views-about-abortion/ (accessed 18 June 2018).

being unaffiliated with religion altogether. Oregon claims the highest percentage at 31%, where Texas has just 18%. Referring back to the chart representing different religious views of abortion, we see that people that do not identify with a specific religion, are in favour of legalizing abortion at 77%. It would be safe to assume a state with more people that do not affiliate themselves with a religion that is against abortion, would have less restrictive policies in place.

Another study worth mentioning in regards to religion and abortion, is one that was conducted by a Christian research group. They found that 70% of women who had had an abortion identified themselves as Christian.[192] This is surprising data considering a majority of the most active pro-life groups are based on Christianity (the American Family Association, 40 Days for Life, Faith and Freedom Coalition, etc).

Although the demographics between the populations of Texas and Oregon are not identical, the ongoing need for women to obtain safe and accessible reproductive healthcare remains the same. However, this information will show us that different groups of people vote in different ways.

6.2 Current Political Structure

The World Economic Forum (WEF) composed a study of 146 nations and found that women only lead 15 countries in a presidential or ministerial role, and through their research they found "...that a higher number of women in [government] is linked to greater investments and better outcomes in health, education and other social indicators."[193] This is important to consider when discussing reproductive health due to the fact that a large portion of restrictive abortion laws have been proposed and passed

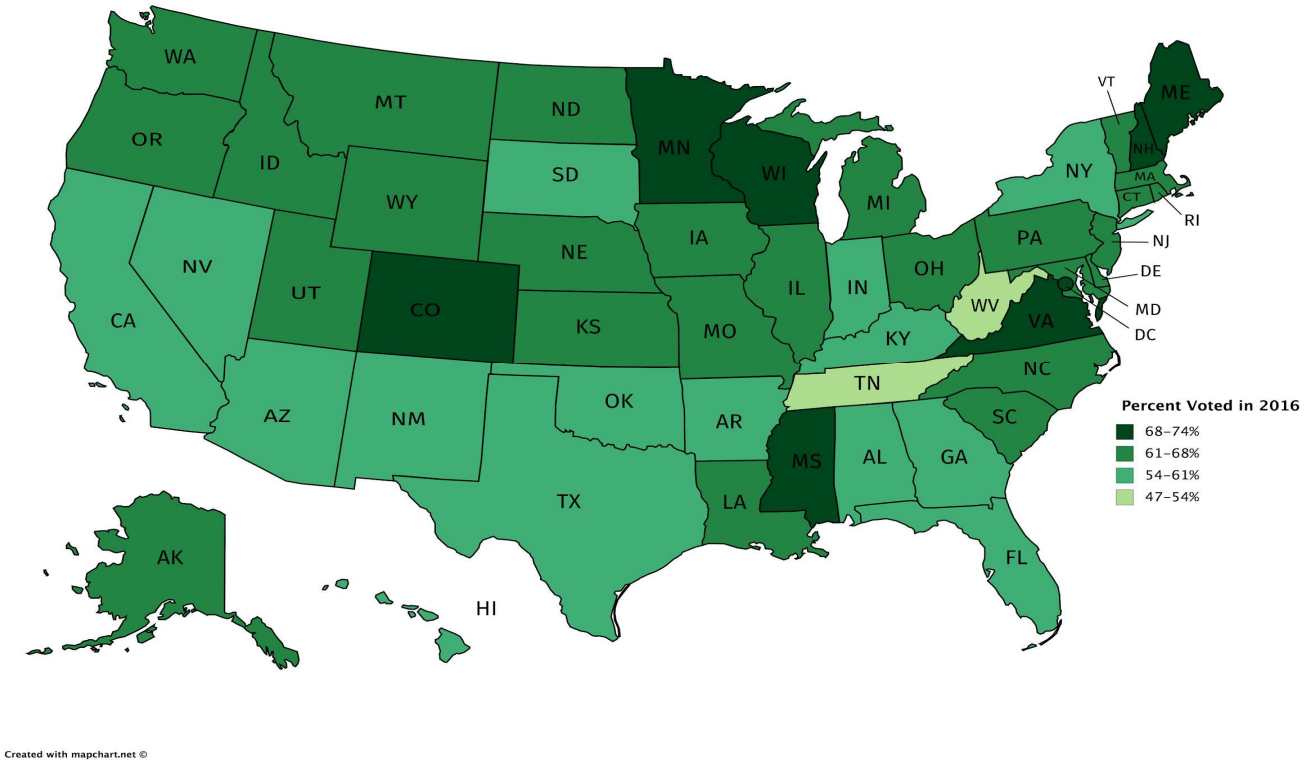
[192] L. Klett, 'Excellence with Integrity: Four Reasons Why How You Do Your Job Matters', *The Christian Post*, 16 June 2018, available from https://www.christianpost.com/sponsored/excellence-with-integrity-four-reasons-why-how-you-do-your-job-matters.html?load=infinite (accessed 20 June 2018).
[193] K. Iversen, '4 Reasons Why Women Should Lead the G7 Summit in 2018', World Economic Forum, 7 June 2018, Availible from https://www.weforum.org/agenda/2018/06/women-leaders-good-for-world-g7 (accessed 10 June 2018).

by a male majority. Within the US we find that there are more pro-choice (as opposed to pro-life or anti-choice) policies enacted when there are a larger number of women in the state legislator that belong to the Democratic party.[194] The phenomenon when politics overrides medicine is found more commonly in areas of the United States where the majority of voters belong to the conservative end of the spectrum and carry strong religious convictions.

The Democratic Party within the US is strongly supportive of nationalized healthcare, and access to contraception and abortion access for women. Whereas the Republican Party, or Grand Old Party (GOP), tends to be more aligned with abstinence programs, pro-life initiatives, and employer-based health insurance. Because of these different stances on women's health, it's helpful to take a look into the intricacies of the voting bloc in each state as the political entities elected are then responsible for proposing, passing, or dismissing bills and other pieces of legislation that can either support or restrict reproductive rights. Referring to Map 2, we can get an overall perspective of voter activity during the 2016 presidential election.

[194]R. Kreitzer, 'Politics and Morality in State Abortion Policy', *State Politics and Policy Quarterly*, vol. 15, no. 1, 2015, pg. 42. Available from: Sage, (accessed 13 May 2018).

Map 2: Percentage of Votes by State in the 2016 Presidential Election[195]



[195] *United States Census Bureau: Voting and Registration*, [website], 2018, https://thedataweb.rm.census.gov/TheDataWeb_HotReport2/voting/voting.hrml, (accessed 12 July 2018).

Map 2 shows that Texas had a voter turnout of 54-61%, while Oregon had 61-68% of their population vote.[196] Diving into these numbers further, the US Census reports that women voted at a rate of 63.3%, compared to only 59.3% of men who cast a ballot.[197] Since this election several health non-profits and women's organizations have put resources into registering people to vote, and communicating the importance of participating in the midterm elections on 6 November, 2018 in order to endorse candidates that support reproductive freedom.

Each of the fifty states elects a Governor, and two US Senators, and then the number of US Representatives are dependent on how many Congressional Districts that particular state is divided into. Oregon has five congressional districts, while Texas has 36 in total. As of July 2018, the Congressional delegation from Texas consisted of 38 total members, 27 Republicans and 11 Democrats.[198] The parallel delegation from Oregon has 7 members in total, made up of 6 Democrats and one Republican.[199]

In addition to the national legislative roles (described above), there are also State Senators and State Representatives, that are based on the number of Legislative Districts in each state. The Texas State Legislature has a total of 181 members, comprised of 31 seats in the State Senate, and 150 in the House of Representatives.[200] The Senate is composed of ten Democrats, twenty Republicans, and currently has one vacancy. While the State Representatives consist of 55 Democrats, 93 Republicans, and two current vacancies. Producing a Republican majority in Texas with nearly fifty more members

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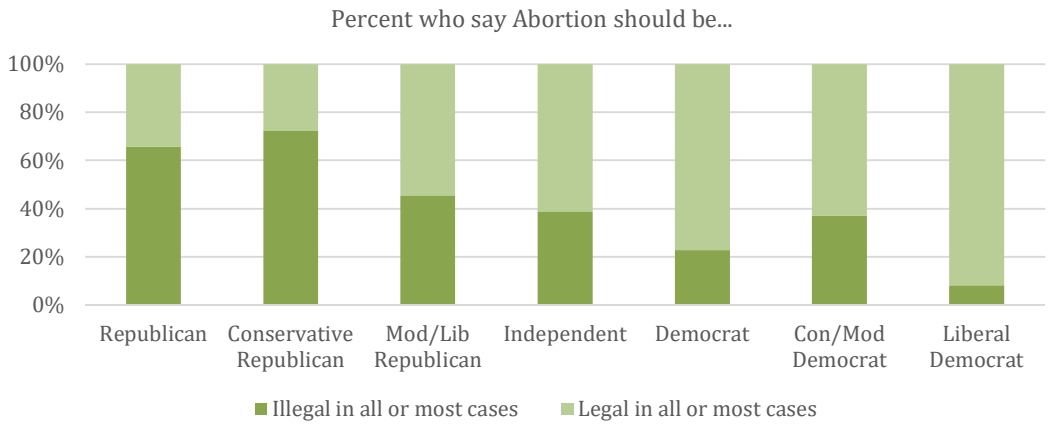
196 *United States Census Bureau: Voting and Registration*, [website], 2018, https://thedataweb.rm.census.gov/TheDataWeb_HotReport2/voting/voting.hrml, (accessed 12 July 2018).
197 *United States Census Bureau: Voting and Registration*, [website], 2018, https://thedataweb.rm.census.gov/TheDataWeb_HotReport2/voting/voting.hrml, (accessed 12 July 2018).
198 *Ballotpedia: United States Congressional Districts From Texas*, [website], 2018, https://ballotpedia.org/United_States_congressional_delegations_from_Texas, (accessed 16 July 2018).
199 *Ballotpedia: United States Congressional Districts From Oregon*, [website], 2018, https://ballotpedia.org/United_States_congressional_delegations_from_Oregon, (accessed 16 July 2018).
200 *Ballotpedia: Texas State Legislative Districts*, [website], 2018, https://ballotpedia.org/Texas_state_legislative_districts, (accessed 16 July 2018).

than the opposing party.[201] Oregon on the other hand has a total of 90 seats in their state legislature (30 in the Senate, and 60 for the House of Representatives. There is a Democratic majority with 52 seats, along with 38 Republicans, and no current vacancies.[202]

To reiterate why the political makeup of each state is relevant to reproductive rights we can analyse population figures from a poll conducted by the Pew Research Centre in the Summer of 2017 regarding abortion access (see Table 8).[203]

Table 8: Opinions on Abortion Access by Political Party 2017



Overall 57% of Americans believe that abortion should be completely legal. However, as illustrated in Table 8, conservative Republicans are the most in favour of making the practice unlawful, whereas over 90% of liberal Democrats are supportive of making abortion legal without restrictions. The study then went on to explain that education levels, religious affiliation and age were among the most significant deciding factors in

[201] *Ballotpedia: Texas House of Representatives,* [website], 2018, https://ballotpedia.org/Texas_House_of_Representatives, (accessed 16 July 2018).
[202] *Ballotpedia: Oregon House of Representatives,* [website], 2018, https://ballotpedia.org/Oregon_House_of_Representatives , (accessed 16 July 2018).
[203]H. Fingerhut, 'On abortion, persistant divides between - and within - the two parties', Pew Research Center, 7 July 2017, Availible from http://www.pewresearch.org/fact-tank/2017/07/07/on-abortion-persistent-divides-between-and-within-the-two-parties-2/ (accessed 20 July 2018).

regards to abortion with an almost an equal consensus between men and women.[204] Having a state legislature with a republican majority versus a Democratic majority, could have a significant impact on how bills are passed when they relate to reproductive rights.

Oregon's current Governor is a Democrat, Kate Brown, was elected in 2016 with 50.6% of the total ballots cast.[205] She gained recognition as the first openly lesbian, gay, bi-sexual, transgender and queer (LGBTQ) candidate to run and win a gubernatorial election in the United States.[206] Conversely, the present Governor of Texas is a Republican, Greg Abbott who is up for re-election in November of 2018. His personal campaign page presents a clear stance on reproductive rights:

> ...we have made great strides to protect life, but we must also do more to protect our vulnerable unborn children...Greg Abbott wants to prevent cities and counties from using your tax dollars to fund abortions...Life is a gift from God, and we must do everything we can to defend Texas' most basic rights endowed by our creator and guaranteed in the Constitution.[207]

This train of thought is widely supported by his voters, which made up almost 60% of the total vote in the 2014 election. In that election he was challenged by a woman who was an active pro-choice candidate, Wendy Davis. In contrast to Governor Abbott's political views, we find quite the opposite sentiments on Oregon Governor, Kate Brown's website:

> Oregon became the first state in the nation to guarantee reproductive health care services for Oregonians...Kate believes that Oregon's women deserve full access and choice of services without restrictive

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[204] H. Fingerhut, 'On abortion, persistant divides between - and within - the two parties', Pew Research Center, 7 July 2017, Availible from http://www.pewresearch.org/fact-tank/2017/07/07/on-abortion-persistent-divides-between-and-within-the-two-parties-2/ (accessed 20 July 2018).
[205] *Ballotpedia: Oregon Gubernatorial Special Election, 2016*, [website], 2018, https://ballotpedia.org/Oregon_gubernatorial_special_election,_2016, (accessed 20 July 2018).
[206] C. Domonoske, 'For First Time, Openly LGBT Govenor Elected: Oregon's Kate Brown', NPR, 9 November 2016, Availible from https://www.npr.org/sections/thetwo-way/2016/11/09/501338927/for-first-time-openly-lgbt-governor-elected-oregons-kate-brown, (accessed 20 July 2018).
[207] *Governor Abbott: Issues*, [website], 2018, https://www.gregabbott.com/issues/, (accessed 18 July 2018).

> policies...Kate will continue to protect the progress that we have made to make reproductive healthcare accessible in Oregon.[208]

Returning to the Senators in each state, we see that Texas has elected two Republicans: John Cornyn and Ted Cruz (who is up for re-election in November 2018). They are both aligned with the pro-life movement and vote accordingly against abortion access and to defund Planned Parenthood and other family planning organizations that are either affiliated with performing the procedure, or even if they present it as an option to their patients at a separate clinic.

Their counterparts in Oregon are both Democrats, Ron Wyden and Jeff Merkley. These two Senators were part of 37 Democrats to write a letter regarding the protection of funding to reproductive health organizations to the Secretary of HHS, Alex Azar, which read:

> This most recent decision is another step in [the Trump Administration's] ideological and discriminatory agenda, as it encourages states to block Planned Parenthood and other essential providers from participating in the states Medicaid programs...Continuing this agenda of discrimination by promoting the state-by-state repeal of the free choice of provider provision and defunding of qualified family planning providers like Planned Parenthood is unacceptable, unlawful, and threatens the lies and rights of millions of women across the country.[209]

This act on behalf of the Democratic party illustrates their strong commitment to upholding reproductive freedoms, and by doing that, support women's human rights.

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[208] *Governor Kate Brown: Meet the Governor*, [website], 2018, https://www.oregon.gov/gov/Pages/meet-the-governor.aspx, (accessed 18 July 2018).

[209] *Wyden, Merkely Urge Trump Administration to End Unlawful Attacks on Women's Health Care*, [Press Release], 15 February 2018, https://www.merkley.senate.gov/news/press-releases/wyden-merkley-urge-trump-administration-to-end-unlawful-attacks-on-womens-health-care, (accessed 18 June 2018).

6.3 Texas State Specific Abortion Legislation

Restrictive policies have been infiltrating Texas legislation over the past decade in an attempt to make abortion providers obsolete, thus explicitly refusing them the right to practice their profession. TRAP laws are created and passed with the purpose of making abortions impossible to obtain, if not illegal. Ellen Wulfhorst, published a piece for Reuters in the Spring of 2018 said that abortion clinics were met with threats or acts of violence at double the rate of the previous year.[210] In extreme cases anti-abortion protesters have killed clinicians. One such incident led to the creation of the National Task Force on Violence against Healthcare Providers, a committee established in 1998 and overseen by the US Department of Justice.[211]

Referring back to the recent Supreme Court nominee and the threat a new Justice could have on overturning Roe v. Wade, this could enact multiple *trigger laws* that many US states have already passed. [212] Louisiana, Mississippi, North Dakota and South Dakota are already poised to completely ban abortion immediately following the dissolution of the verdict in Roe v. Wade.[213] Currently, there is no law in Texas that would do this, however there is a legal loophole in which the state never formally removed the ban on abortion after the decision of Roe v. Wade was official. This could cause some initial delays, or the need for more specific legislation, but all indicators point to Texas repealing the right to abortion alongside the other four states.

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[210] E. Wulfhorst, 'Death threats, intimidation double at U.S. abortion clinics, group says', Reuters, 7 May 2018, Available from https://www.reuters.com/article/us-usa-abortion-violence/death-threats-intimidation-double-at-u-s-abortion-clinics-group-says-idUSKBN1I82K1, (accessed 3 June 2018).

[211] *The United States Department of Justice: National Task Force on Violence Against Healthcare Providers*, [website], 2015, https://www.justice.gov/crt/national-task-force-violence-against-health-care-providers-0, (accessed 3 June 2018).

[212] A *Trigger Law* is a piece of legislation that would immediately ban any form of abortion if the Federal Court was to absolve the ruling in Roe v. Wade.

[213] E. Platoff, 'With Kennedy's retirement, Texas abortion opponents see "opportunity" in 2019 and beyond', *The Texas Tribune,* 28 June 2018, available from https://www.texastribune.org/2018/06/28/anti-abortion-advocates-texas-kennedys-retirement-supreme-court-opport/ (accessed 2 July 2018).

The following section will consist of a brief description of state specific abortion legislation, how implementation of these new laws has affected Texan women. Following the description, we will examine what human rights are possibly being violated.

House Bill 214

House Bill 214 was signed into law on 15 August 2017. Its main objective was to force women to pay a separate fee for abortion coverage in addition to their other health insurance premium. Colloquially called 'rape insurance' this bill was criticized by pro-choice groups because it operates under the notion that a woman would predict she needed coverage for an abortion when she enrolled once a year in her healthcare plan. The bill eliminated the responsibility of insurance companies to provide coverage or reimburse their policy holders for abortion (regardless if they were related to incest, rape or foetal abnormalities). The text of the finalized bill states "An *elective abortion* means an abortion, as defined by Section 245.002, Health and Safety Code, other than an abortion preformed due to a medical emergency."[214] Meaning unless the procedure is being performed to save the life of the woman, it is seen as *elective* which infers it is unnecessary.

The Texas Research Evaluation Project complied information on the bill's passing, showing that of the 60,000 Texans who have an abortion annually only about half of them are insured, and of those approximately 30,000 women, as little as 5% were actually able to use their policy to cover the procedure.[215] Statistically, even though this will not impact a large percentage of Texas women, it is one more barrier for women to overcome in seeking an abortion. This can lead to prolonging their date of treatment, and increasing

[214] 'HB 214', *Texas Legislator*, [website], 2017, https://capitol.texas.gov/tlodocs/851/billtext/pdf/HB00214F.pdf#navpanes=0 (accessed 15 June 2018).
[215] L. Stein, 'Texas Politicians Pass Cruel Bill Effectively Banning Insurance Coverage of Abortion', *Progress Texas*, 10 August 2017, available from https://progresstexas.org/blog/texas-politicians-pass-cruel-bill-effectively-banning-insurance-coverage-abortion (accessed on 20 July 2018).

the financial burden, as the National Women's Law Centre observed, "…58% of abortion patients say they would have had their abortion earlier if they could have. Nearly 60% of women who experience a delay in obtaining an abortion cite the time it took to make arrangements and raise the money to pay for it."[216]

In regards to how this relates to the human rights of women, it is detrimental to their basic autonomy and decision making. Liberal feminists would point out that it is an additional cost only incurred by females, making it unequal to the fees for male coverage. It disproportionately hinders lower-income women by forcing them to pay for extra coverage when there is no precise way of predicting if they will need that procedure. Beyond the blatant gender discrimination (which is protected against in the CEDAW although the US is not bound by it) there is also an element of dignity that is sacrificed when women are forced to opt in for additional coverage with broad stigma and shame attached to it. The first article in the UDHR states that "All human beings are born free and equal in dignity and rights."[217] When women are forced to purchase expensive insurance premiums, they are not being treated equally with their male counterparts.

Senate Bill 8

Senate Bill 8 (SB8) was first officially filed in November 2016, and is currently in recess after being signed into law by Texas Governor Abbott in 2017. The state was then sued by The Centre for Reproductive Rights and Planned Parenthood because of the unlawful restrictions it placed on women.[218] The bill (which was proposed by State Senator Charles Schwertner, a conservative Republican), intended to discontinue use of the medical practice known as dilation and evacuation (D&E). It is a common, and safe

[216]L. Stein, 'Texas Politicians Pass Cruel Bill Effectively Banning Insurance Coverage of Abortion', *Progress Texas*, 10 August 2017, available from https://progresstexas.org/blog/texas-politicians-pass-cruel-bill-effectively-banning-insurance-coverage-abortion (accessed on 20 July 2018).
[217] *Universal Declaration of Human Rights (adopted 10 December 1948) 217 A (III), Article 1.*
[218] M. Evans, 'Abortion rights groups sue Texas over procedure ban', *The Texas Tribune*, 20 July 2017, available from https://www.texastribune.org/2017/07/20/center-reproductive-rights-sues-texas-over-abortion-procedure-ban/ (Accessed 12 July 2018).

procedure that accounts for 95% of all abortions after the first trimester.[219] The method used for a termination under ten weeks is with an oral pill, mifepristone, which patients can take at home.[220]

Removing this version of care means the woman and her doctor may be forced to choose another method, which in most cases during the second trimester would mean inducing early labour (thought it's rarely done in the US), which can cause the woman additional physical and emotional trauma. The Guttmacher Institute found that "Medical groups argue that if faced with one of these bans, providers would be forced to base clinical decisions on fear of prosecution rather than on their professional medical judgment or the preferences of their patients."[221]

This is an egregious violation of human rights due to the fact that a woman is being barred from having the autonomy to make her own medical decisions, and that her mental wellbeing may be in jeopardy if she is denied the form of treatment she was seeking.

SB8 also included a second portion which mandated that any facility that terminated a pregnancy must either cremate of bury the remains (be it from a stillbirth, miscarriage or termination). The bill was blocked by US District Judge David Ezra, and is expected to be decided in August 2018. There were similar laws that were also stopped in Louisiana, Kentucky and Arkansas because they were found to be putting an 'undue burden' on both patients and providers.[222] Facilities that previously donated remains for research

[219] M. Donovan, 'D&E Abortion Bans: The Implications of Banning the Most Common Second-Trimester Procedure', *The Guttmacher Institute*, 21 February 2017, available from https://www.guttmacher.org/gpr/2017/02/de-abortion-bans-implications-banning-most-common-second-trimester-procedure (accessed 20 July 2018).
[220] *Planned Parenthood of Illinois: Abortion Pill*, [website], 2018, https://www.plannedparenthood.org/planned-parenthood-illinois/patient-resources/abortion-services/abortion-pill (accessed 20 July 2018).
[221] M. Donovan, 'D&E Abortion Bans: The Implications of Banning the Most Common Second-Trimester Procedure', *The Guttmacher Institute*, 21 February 2017, available from https://www.guttmacher.org/gpr/2017/02/de-abortion-bans-implications-banning-most-common-second-trimester-procedure (accessed 20 July 2018).
[222] J. Herskovitz, 'Texas Foetal tissue burial law on trial at US court', *Reuters*, 16 July 2018, available from https://www.reuters.com/article/us-texas-abortion/texas-fetal-tissue-burial-law-on-trial-at-u-s-court-idUSKBN1K62QE (accessed 22 July 2018).

purposes, now must cover the cost of either burying or cremating remains, and if not, they will have to close their practice leaving more women without access to reproductive healthcare. Keeping with the theme of other restrictive abortion legislation SB8 was not drafted by anyone from the medical community and it is not based on any clear health benefit to the woman.

In regards to religious belief about disposing of remains, secular women may be put in a position where their freedom of religion is compromised if they are forced to undergo planning for either burying or cremating foetal remains. As mentioned earlier, the ICCPR protects an individual right to religion, which also implies you have the right to be free from other religious ideas and values begin forced upon you.

House Bill 3994

Written and proposed in 2015 by a Republican State Representative Geanie Morrison, House Bill 3994 (HB3994) was intended to reinforce parental control and involvement in cases where minors were seeking abortions.[223] Critics of the bill suggested it could have devastating effects in cases of domestic abuse, familial violence, and human trafficking situations. A problematic component in the text of the bill states that minors must have government issued identification in order to bring a petition to bypass parental consent to court, which excluded school identification cards.

Democrats argued that in trafficking cases victims wouldn't have access to a personal resource such as drivers license or passport, and that this bill was going to neglect medical procedures for an already vulnerable group of people.[224] The legislation also made it more difficult for minors to issue a petition, because instead of their choice of

[223] A. Ura, 'House Oks Bill Restricting Minors Seeking Abortions', *The Texas Tribune*, 13 May 2015, available from https://www.texastribune.org/2015/05/13/house-oks-bill-restricting-minors-seeking-abortion/ (Accessed 18 June 2018).
[224] A. Ura, 'House Oks Bill Restricting Minors Seeking Abortions', *The Texas Tribune*, 13 May 2015, available from https://www.texastribune.org/2015/05/13/house-oks-bill-restricting-minors-seeking-abortion/ (Accessed 18 June 2018).

counties in which to file, they now are restricted to a judge in their home county. Journalist Andrea Grimes from the Texas Observer stated that "According to the new rules, if a judge fails or refuses to rule on a minor's application for an abortion after five business days, the minor's application is denied."[225] These newly imposed guidelines make it difficult for a minor with an unwanted pregnancy (possibly due to rape or incest) to be able to navigate the court system and puts the burden of proof on them to display that they would face worse consequences if forced to get parental consent.

There are a number of issues when it comes to framing this law within the realm of human rights. Once again, we have minors (women and girls under 18) that are not legally able to express their autonomy in their own medical decisions. By forcing young applicants to defend themselves in court and plead for a medical procedure in order to eliminate an unwanted pregnancy, they are forced to explain in front of the court system why they are not able to receive or even ask their parents for permission. This system in which adolescents are shamed publicly when asking for sexual healthcare is a violation of their dignity. Having a judge determine you would not be granted a parental bypass, would mean that a minor can be condemned to carry out a forced pregnancy regardless of her own individual choice.

House Bill 2

Originally proposed in 2013, House Bill 2 (HB2) was considered one of the strictest pieces of legislation to address abortion in Texas history. It was eventually overturned in June 2016 by the US Supreme Court, as mentioned earlier in the Whole Women's Health v. Hellerstedt case. Despite its short lifespan, the bill caused a considerable amount of damage, some of which Texas has not had time to recover from.

[225] A. Grimes, 'Texas Court Makes Tough New Abortion Law Even Tougher', *The Texas Observer*, 30 December 2017, available from https://www.texasobserver.org/judicial-bypass-texas-supreme-court-3994/ (accessed 18 June 2018).

Of the overall 41 clinics in Texas, the number was halved after HB2 went into effect, and the distances for rural women to receive abortion care increased by an average of 100 miles.[226] These changes increased costs and isolated vulnerable Texans that live outside of city centres. In addition to 50% of facilities closing, Texas also has a severe lack of medical professionals in relation to its overall population:

> There are about 13,000 [physicians] in Texas serving 11,200,000 people, for a ratio of one medical doctor (MD) to every 861 patients. The national ratio is one to 674. Obstetrics-gynaecology is the specialty area which includes abortion, and the Texas Medical Association (TMA) says the state needs 400 more obstetrician-gynaecologists to meet population needs. In addition to a doctor shortage, there is a distribution problem…[t]here are 23 Texas counties with no MD.[227]

Giving women less options for care in their community can create a larger financial burden considering the additional time and money necessary to attend an appointment.

House Bill 15

In 2011 Republican Representative Sid Miller's proposed House Bill 15 (HB15) was granted emergency status meaning that it could still be deliberated over during a legislative blackout.[228] The legislation required physicians in abortion clinics to preform a sonogram on their patient 24 hours in advance of their procedure, while the woman was made to watch the screen and listen to the heartbeat as well as the physician's description.[229]

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[226] C. Feibel, 'Half of Texas Abortion Conics Close After Restrictions Enacted', *NPR*, 18 July 2014, available from https://www.npr.org/sections/health-shots/2014/07/18/332547328/half-of-texas-abortion-clinics-close-after-restrictions-enacted (accessed 12 July 2018).
[227] M. Hume, 'Abortion in Texas', *Texas Monthly*, 1 March 1974, available from https://www.texasmonthly.com/articles/abortion-in-texas/ (accessed 12 July 2018).
[228] R. Hamilton, 'Abortion Sonogram Bill Tentatively Passes House', *The Texas Tribune*, 3 March 2011, available from https://www.texastribune.org/2011/03/03/texas-abortion-bill-tentatively-passes-house/ (accessed 28 June 2018).
[229] 'Bill Text: TX HB15', *Legiscan*, [website], 2018, https://legiscan.com/TX/text/HB15/id/287102 (accessed 12 July 2018).

Those that opposed the bill claimed that it was meant to shame and embarrass women into refraining from having the procedure. Supporters claimed that the patient could look away or leave at any time during the sonogram, however there is an important factor to point out within that argument. During the first trimester of pregnancy, a transvaginal ultrasound is more common (as opposed to a sonogram performed on the outside of the abdomen), which puts the woman in a vulnerable state, not just laying down, but her feet are in stirrups as well, making any attempt to leave the room extremely awkward and difficult. If physicians fail (or refuse) to perform these tasks prior to the procedure taking place, they face the possibility or losing their license, and will be fined $10,000.[230] Surprisingly a female Republican Representative vetoed the bill due to the fact she found it too invasive on the relationship between the doctor and patient. Forcing women to listen to a heartbeat and view an ultrasound holds no medical value, and is unethical due to the fact the women have no choice in the matter.

This is an extreme violation of the right to privacy and bodily autonomy. Mandating that a woman can only terminate a pregnancy after being subjected to emotional trauma is a clear violation to her dignity, and her right to be free from in-humane and degrading treatment as protected in article 7 of the ICCPR. Data shows there is not a significant percentage of women that continue their pregnancy after their first sonogram appointment, and this comment from a Virginian newspaper regarding a similar law that was passed in Virginia shows the complete lack of respect this law has for women:

> Under any other circumstances, forcing an unwilling person to submit to a vaginal probing would be a violation beyond imagining. Requiring a doctor to commit such an act, especially when medically unnecessary, and to submit to an arbitrary waiting period, is to demand an abrogation of medical ethics, if not common decency.[231]

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[230] 'Texas Bill Amending Woman's Right to Know Act to Include Mandatory Sonogram and Waiting Period (HB 15)', *Rewire News*, 7 November 2013, available from https://rewire.news/legislative-tracker/law/texas-womans-right-to-know-act/ (accessed 20 June 2018).

[231] 'Outrage in the Virginia Senate', *The Virginian Pilot,* 3 February 2012, available from https://pilotonline.com/opinion/editorial/article_53f49450-4775-518a-8760-954952bd5124.html (accessed 12 June 2018).

This is clearly a feminist issue because there is no comparison to a male being subjected to an unnecessary, invasive procedure when trying to access healthcare. Women are again subjected to higher costs due to the fact there are two appointments they must attend, that are scheduled 24 hours apart by a mandatory waiting period. This could easily double their expenses and could create mental and emotional trauma.

Senate Bill 835

Senate Bill 835 (SB835) was the precursor bill to HB15, proposed in 2003, which laid the groundwork for providing misleading information to women seeking an abortion in Texas. It revised an existing pamphlet given to women before an abortion, called *A Woman's Right to Know,* and was passed with supporters arguing it created a platform for patients to make an informed consent to the procedure.[232] The text includes a passage that reads "…[t]he possibility of increased risk of breast cancer following an induced abortion and the natural protective effect of a completed pregnancy in avoiding breast cancer."[233] This claim is based on inaccurate information, pushed by the pro-life movement, and denied by the medical community including the Susan G. Komen Foundation, which states the following on their website:

> Research clearly shows abortion (also called induced abortion) does not increase the risk of breast cancer. Since 2003, the American College of Obstetricians and Gynaecologists (ACOG) and the National Cancer Institute (NCI) have agreed the scientific evidence does not support a link between abortion and breast cancer. The ACOG and NCI routinely review the evidence on this topic and continue to agree there's no link between abortion and breast cancer. ACOG reaffirmed their

[232] A. Pattani, 'Abortion Booklet Revisions Called Even More Inaccurate', *The Texas Tribune*, 27 July 2016, available from https://www.texastribune.org/2016/07/27/state-proposes-changes-abortion-information-bookle/ (accessed 16 July 2018).
[233] 'Texas Woman's Right to Know Act (SB 835)', *Rewire News*, 10 January 2014, available from https://rewire.news/legislative-tracker/law/texas-womans-right-to-know-act-sb-835/ (accessed 12 July 2018).

conclusion that there is no link between abortion and breast cancer in 2018.[234]

The material also claims that women who end their pregnancy have higher rates of suicide, and instead of medical language (such as foetus) it deliberately humanizes the embryo using the terms *your baby* or *unborn child*.[235] The pamphlet also states that abortion has an high fatality rate for the women; when in fact only 5 people died between 2001-2014 from abortion complications, while during the same time period over 1,000 women died due to pregnancy related issues.[236] Supporters of the bill claim it was created with cooperation from the ACOG, however the medical group claims none of their suggestions or revisions were taken into consideration in the final booklet. A study done at Rutgers University found that one third of the medical information contained in *A Women's Right to Know,* was incorrect.[237]

The spreading of false information to vulnerable women shows blatant disrespect for women, as well as the patient-doctor relationship. The Director for Communications and Policy Initiatives at NARAL, commented "If anything, it's going to shame a patient seeking abortion care and introduce unnecessary and unsupported claims that are ultimately designed to coerce someone."[238] Misleading information from an authority figure, such as a trusted physician, is unethical and unnecessary.

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[234] *Susan G. Komen: Abortion and Breast Cancer Risk*, [website], 2018, https://ww5.komen.org/BreastCancer/Table25Abortionandbreastcancerrisk.html (accessed 12 July 2018).
[235] A. Pattani, 'Abortion Booklet Revisions Called Even More Inaccurate', *The Texas Tribune*, 27 July 2016, available from https://www.texastribune.org/2016/07/27/state-proposes-changes-abortion-information-bookle/ (accessed 16 July 2018).
[236] A. Pattani, 'Abortion Booklet Revisions Called Even More Inaccurate', *The Texas Tribune*, 27 July 2016, available from https://www.texastribune.org/2016/07/27/state-proposes-changes-abortion-information-bookle/ (accessed 16 July 2018).
[237] J. Ferguson, G. Howard, and A. Roberti, 'Informed Consent: Women Considering Abortion in Many States Often Get Medically Inaccurate Information', *Rutgers Today*, 29 February 2016, available from https://news.rutgers.edu/informed-consent-women-considering-abortions-many-states-often-get-medically-inaccurate-information/20160228#.W2MMlNJKjD4 (accessed 20 June 2018).
[238] A. Pattani, 'Abortion Booklet Revisions Called Even More Inaccurate', *The Texas Tribune*, 27 July 2016, available from https://www.texastribune.org/2016/07/27/state-proposes-changes-abortion-information-bookle/ (accessed 16 July 2018).

Human Rights violations from SB 835 concern the loss of dignity and right to an education. When politicians demand medical professionals spread false information to their patients, that is a violation of their right to obtain accurate and scientifically based information as mentioned in article 15 of the ICESCR. The right to education is being taken advantage of in that the information presented in the booklet is cited from seemingly credible sources, yet women aren't made aware that the ACA and ACOG disagree with the information due to the fact that it is based on false evidence. The right to dignity has been removed when a medical professional is made to lie to their patients due to falsified claims imposed by the government.

6.4 Oregon State Specific Abortion Legislation

In contrast to Texas, Oregon currently has no TRAP laws, and very few restricting abortions beyond the federal guidelines. Meaning there are no mandatory waiting periods (causing multiple appointments to be necessary), no parental or spousal consent is legally required, and there are no barriers to funding as abortion is mandated to be covered by all insurance companies and funds are to be provided by the state if they patient is uninsured (or if their legal status is undocumented).[239] Oregon represents around 1% of the total abortions that occur throughout the US each year, and in 2014 the total number of women who obtained the procedure was under 10,000.[240] The regional website of NARAL Pro-Choice Oregon, presents the fact that "…Oregon is the ONLY state in the nation without legislative restrictions on abortion."[241] With this being said, this chapter will instead focus on the opposite form of legislation that protects the right to abortion, a bill unique to Oregon, which was passed in 2017.

[239] *Guttmacher Institute: State Facts About Abortion Oregon,* [website], 2018, https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-oregon (accessed 18 June 2018).
[240] *Guttmacher Institute: State Facts About Abortion Oregon,* [website], 2018, https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-oregon (accessed 18 June 2018).
[241] NARAL Pro-choice America: State Law Oregon, [website], 2018, https://www.prochoiceamerica.org/state-law/oregon/, (accessed 13 June 2018).

House Bill 3391

Governor Kate Brown signed the Reproductive Health Equity Act into law on 15 August, 2017.[242] This was a momentous win for reproductive rights advocates, because it provided multiple opportunities for people to receive additional care that they have not previously been able to afford. There are four main points of House Bill 3391 (HB3391): 1) it mandates Oregon health insurance providers must provide coverage for reproductive services with no out- of pocket costs, 2) it allows undocumented women and men to receive sexual healthcare at no cost, 3) it protects the right to abortion in the event Roe v. Wade is overturned, and 4) it protects patients from gender discrimination in relation to medical coverage.[243]

The first point of requiring insurance providers to cover fees for abortion with no co-payment from the patient is the direct opposite of HB214 in Texas where women are forced to pay for additional coverage in the event they may need an abortion (these bills were both passed at the same time in August 2017). By removing the payment, a patient must have for their deductible, co-payment and the additional insurance rider, Oregon has shown that a state is able to step in and provide these services with no money needed from the patient. Financial instability is one of the greatest deterrents to seeking out medical care, and it can cause a delay in scheduling an appointment, making a pregnant woman lose valuable time in the process. A Senior researcher at the Guttmacher Institute, Rachel Jones, commented "…many of these women are poor or low-income, and have to come up with several hundred dollars to pay for the procedure. They rely on friends and family, clinics and abortion funds, and often have to not pay their bills or delay payment in order to do so."[244] Currently in Texas a first trimester abortion will likely

[242] 'Governor Kate Brown Signs Reproductive Health Equity Act', *Planned Parenthood Advocates of Oregon,* 15 August 2017, available from https://www.ppaoregon.org/2017/08/15/governor-kate-brown-signs-reproductive-health-equi/ (accessed 12 July 2018).
[243] 'Governor Kate Brown Signs Reproductive Health Equity Act', *Planned Parenthood Advocates of Oregon,* 15 August 2017, available from https://www.ppaoregon.org/2017/08/15/governor-kate-brown-signs-reproductive-health-equi/ (accessed 12 July 2018).
[244] 'Many Women Find It Difficult to Pay for an Abortion Procedure, are Unable to Use Insurance', *Guttmacher Institute,* 8 May 2013, available from https://www.guttmacher.org/news-release/2013/many-women-find-it-difficult-pay-abortion-procedure-are-unable-use-insurance (Accessed 20 June 2018).

cost around $500, and during the second trimester it could be twice as much. The expenses are such a well-known barrier that there are multiple organizations devoted to raising funds to cover abortion costs for women that can't cover the cost themselves (this includes the Texas Equal Access Fund, the Lilith Fund, and the National Abortion Federation). Eliminating the need for outside agencies to fundraise for medical procedures would have an enormous impact on the lives of many women in Texas if the state were to adopt a similar bill.

The second portion of the Health Equity Act is revolutionary - in that it protects the rights of immigrants that may be undocumented who are trying to seek out abortion services. In contrast to Texas where undocumented women often avoid health centres because there are threats of getting deported by ICE agents:

> The Government Accountability Office (GAO) found there were 18 moving 'tactical checkpoints' stationed within 100 miles of the Mexico-Teas border…in addition, permanent checkpoints are stationed on major highways, including US-281, the highway a woman would take to make the four-hour journey from the Rio Grande Valley to the nearest clinic that remains open in San Antonio.[245]

The situation is different in Oregon due to the fact that they are not on an international border, so immigration is not at the same level as in Texas. However, the state government estimated that "…48,000 women of reproductive age in Oregon are categorically excluded from Medicaid and prohibited from purchasing insurance on the Exchange due to their citizenship status, leaving them without coverage for essential health services like reproductive health care…"[246] This ruling is so inclusive, it even extends the healthcare period of coverage for 6 months postpartum as well. In 2018, the national average rate for maternal mortality (women dying of health complications

[245] C. Costantini, 'For undocumented immigrants, it's nearly impossible to get an abortion in South Texas', *National Latina Institute for Reproductive Health*, 10 October 2014, available from http://latinainstitute.org/en/undocumented-immigrants-it%E2%80%99s-nearly-impossible-get-abortion-south-texas (accessed 12 June 2018).
[246] *The Reproductive Health Equity Act,* [website], 2018, https://reprohealthequity.org/about/about-the-bill/ (accessed 12 July 2018).

within 42 days after giving birth) currently stands at 20.7 per 100,000 women. Oregon's rate is lower at 13.7, while Texas is noticeably higher at 34.2 women.[247] Demographically their rates are almost double that of the national average for women of colour. Providing comprehensive, free, accessible postpartum care is one of the best ways at lowering the maternal mortality rate.

The third part of HB3391 protects Oregon's women in the event that the Affordable Care Act is dismantled, or if Roe v. Wade is dismissed meaning abortion would be illegal at the federal level. Considering the current administration is adamant on revoking both of these standards, Oregon has shown a progressive stance by solidifying their values as state law. When discussing *trigger laws* earlier, it was mentioned that there are already four states that would immediately revert to outlawing abortion if the Supreme Court were to dismiss their earlier ruling (something Republicans have been threatening by nominating Kavanaugh as the new Justice). If this were to happen Oregon would remain as one of the few states to uphold the legality and accessibility of abortion.

Lastly the bill aims to rid the insurance and medical marketplace of discrimination towards people that identify as transgender (i.e. persons that prefer to align themselves with the opposite gender than they were born). As it stood before the bill, if a transgender person applied to their insurance carrier for coverage, many of the services fall categorically under women's healthcare which an insurance company could deny payment for if their client was born a male (even though the patient identifies as female).[248] This is not strictly tied to abortion, but it encompasses many other reproductive and sexual health screenings that can now be covered.

Overall HB3391 has expanded and protected sexual and reproductive care for hundreds of thousands of Oregonians. Its estimated that nearly 400,000 women now have access

[247] *America's Health Rankings: Health of Women and Children,* [website], 2018, https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/maternal_mortality/state/TX (accessed 8 June 2018).
[248] *The Reproductive Health Equity Act,* [website], 2018, https://reprohealthequity.org/about/about-the-bill/ (accessed 12 July 2018).

to contraception and abortion care regardless of if the Affordable Care Act or Roe v. Wade is dismantled.[249] By breaking down barriers such as citizenship status, income level and gender identity, Oregon has opened the door to a healthier community by granting free reproductive healthcare access to anyone within the state.

In terms of human rights, this law is promoting an equality-based platform for delivering reproductive care. It protects against gender discrimination, upholds women's rights by maintaining they must not pay more for abortion or contraceptive coverage, and it respects the rights of non-citizens by allowing them to take part in free care. The right to health is fully supported, and not contingent on the finances of the patients. The right to life is also preserved for women who would have been forced to turn to unsafe methods to terminate their pregnancy if they weren't able to access a legal abortion otherwise.

[249] 'Governor Kate Brown Signs Reproductive Health Equity Act', *Planned Parenthood Advocates of Oregon,* 15 August 2017, available from https://www.ppaoregon.org/2017/08/15/governor-kate-brown-signs-reproductive-health-equi/ (accessed 12 July 2018).

7. Conclusion and Recommendations

Although Texas and Oregon belong to the same country, they have very different ways in which they regulate reproductive health and abortion access for their respective populations. This can be explained by their differences in geographic location (Texas is a considerably larger state which boarders Mexico, where Oregon is smaller in scale), the demographics of the people that reside there including racial factors and poverty statistics, and the politicians they elect to lead them by producing and passing legislation unique to their own state.

By enforcing TRAP laws, the state is severely damaging women's health and wellbeing based on religious values instead of scientifically and medically based services and information. The platform used to argue in favour of passing TRAP laws, is that they are in the best interest of the woman and protects her from a possibly dangerous and life-threatening procedure. Liberal feminists would argue that this is a patriarchal viewpoint, assuming that men need to regulate the health options given to women in order to protect them from their own decisions.

In all reality, the complications and risks of an abortion are less dangerous than giving birth, and as we have seen earlier the risk of complications are extremely low. The point at which seeking an abortion becomes threatening to the wellbeing of the woman, is when she attempts to terminate her pregnancy by her own means and resources, without the help of medical professionals. Such occurrences have increased in in the US since 2010 when TRAP legislation first began to make headway causing clinics to close their doors.

The result of a state adopting TRAP laws is a rapid closure of clinics, which in turn creates an unprecedented volume of patients seeking care at the few remaining medical centres. This causes not only additional financial strain on the women, but could extend the time frame for her appointment. Patients that are post 20 weeks fertilization are denied access to care, and may need to travel outside of Texas to obtain the healthcare they require.

The right to dignity (which is explicitly protected in Article 1 of the Universal Declaration of Human Rights) plays an important role in these findings. Although it is not a binding treaty, the fundamental rights established in this document are seen as customary international law. Being able to follow a reproductive path that is not interfered with by the government or your physician should be a basic human right for women all over the world, especially those that reside within a country, such as the United States, that has formally proclaimed legal access to abortion. A concrete example of undermining a patient's dignity (which is protected by international human rights law) would be the state mandated packets and verbal information that providers are required by law to present, which knowingly facilitate incorrect information.

If we refer again to the Universal Declaration of Human Rights (UDHR), we see the UN has also obliged states to procure the "...right to life, liberty and the security of person." Liberty infers that the persons are able to exercise their individual free will, and navigating your own sexual healthcare is a prime example of maintaining security over one's person.

The right to self-determination found in the ICCPR is also under threat in certain areas of the US when the government intervenes in a woman's reproductive choice. She should be granted the right to pursue her own development without interference.

We can refer once again to Article 17.1 found in the ICCPR, which preserves a person's right to privacy in regards to their family and home life. As the US has taken the necessary steps to ratify this convention, the nation is legally bound to uphold its rights.

The United States constitutional right to privacy is the most widely cited legal instrument regarding abortion access in America. As mentioned earlier, it was used in the verdict of Roe v. Wade, and numerous other times in order to preserve a woman's right to choose. The case of Casey v. Planned Parenthood, also provided a legal foundation to

protect access to abortion, by coining the phrase 'undue burden' in regards to regulations placed on either the patient or the provider which serve no medical purpose.

The abortion provider's right to work, which can be referenced in Article 23.1 of the UDHR, is being systematically dismantled by Texas which continues enforcing unobtainable requirements for the facilities to meet. Which leaves many providers no other choice but to close their businesses. Multiple doctors have reported undergoing additional stress due to increased financial demands attributed to TRAP laws, which was evident in the documentary, *Trapped*, when several providers admitted that they had cashed in their retirement funds, life savings, and many had even taken out additional mortgages on their homes in order to have money to update their facilities. There is also the question of keeping their dignity intact while continuing to provide reproductive care under these restrictive circumstances and being forced to present incorrect information to their patients which they don't agree with. Dr. Mercier commented in the medical journal, Contraception, that:

> None of what they are proposing correlates with increased safety or efficacy of the procedure...it's just purely political because they're trying to restrict abortion access...they are just laws that catch me doing something wrong legally, not doing anything wrong medically.[250]

To include a right that is threatened for both the provider and the patient, one can refer to the basic human right of freedom of religion. This is found in the UDHR Article 18 and ICCPR Article 18. They state that you are free to follow your own religious convictions, which is imposed upon when the state uses morality and specific religious ideologies to dictate laws. It is clear that the formation and implementation of various TRAP laws in the state of Texas, have had a detrimental impact on abortion providers and women that seek their care. Whereas Oregon has chosen to go the opposite route and make safe, medical abortions available to every woman at no cost to them, and irrespective of their citizenship status.

[250] Mercier, *Contraception*, p. 509

The original question asked at the forefront of my research was how do the restrictive regulations of abortion and related reproductive rights in Texas compare against policies proposed and practiced in Oregon, and what effects do these policies have on the human rights of women living in either state?

Through my detailed examination of statistics regarding population demographics, voter profiles, political parties in power, the evidence suggests that the regulations stipulated in TRAP laws have a profoundly negative effect on the most basic human rights of women and healthcare providers in Texas. The legislation is damaging to their dignity, self-determination, right to choose when and how to have a family, what religious convictions to adhere to, and the right to liberty and choice over one's own body. A state has the obligation to respect, fulfil and protect its residents. Through a combination of positive and negative rights, they need to ensure enough accessible healthcare personnel and infrastructure are available to provide for adequate sexual health resources for the entire population. The state is also expected to refrain from dictating reproductive decisions and impeding services for women trying to access abortion care.

Oregon, being the only state in the nation to have no restrictive abortion policies, has fulfilled its obligation by passing HB 3391 to protect the wellbeing of the women residing in that state. Texas on the other hand, would need to immediately repeal SB8, 835, and HB 2, 15, 214, and 3994. This would allow more women to access the procedure without having to overcome legal, financial, geographic, or citizenship status barriers, instead of attempting to take the route to terminate the pregnancy in an unsafe and illegal manner.

Other avenues to alter the rate of abortion within a state could be preventative methods. Texas has the highest instances of deaths related to pregnancy throughout the entire developed world, which in the argument to provide abortion access you could contend

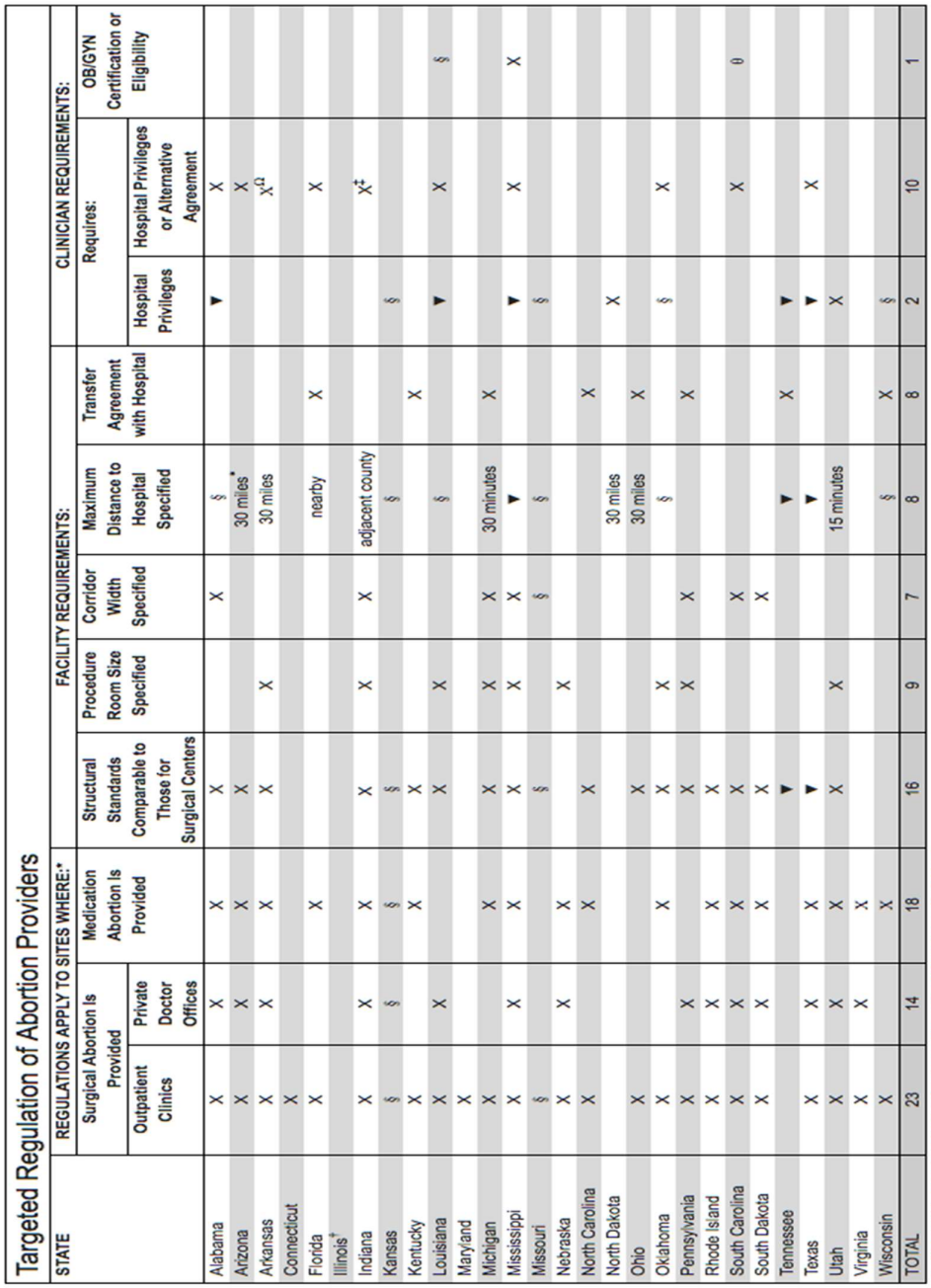
that a woman's right to life could potentially be at stake if she is forced to go through with an unwanted pregnancy.[251]

Overall Texas should cease passing detrimental and restrictive legislation, and accept the idea that whether abortion is legal or not, it will continue to happen. They have the power to decide if it is done safely in a legal medical facility with trained professionals, or they can condemn women and continue to force them to attempt illegal and unsafe methods. Women need to be allowed the freedom to access their right to seek reproductive care, and lawmakers need to propose legislation based on scientific and medically obtained information, as opposed to religious and moral viewpoints. Politicians also need to understand the private relationship between a woman and her physician, and respect the choices she makes about her own reproductive choices. By giving women more autonomy and providing them with resources to help succeed with their sexual and reproductive health, they will in turn be respecting and fulfilling their human rights as well.

[251] M. Hoffman, 'Texas has the highest pregnancy-related death rate in the developed world', *The Chicago Tribune*, 5 June 2017, http://www.chicagotribune.com/lifestyles/health/ct-texas-pregnancy-death-rate-20170605-story.html , (accessed 6 June 2018).

8. Appendix

Figure 1: Targeted Regulation of Abortion Providers by State[252]



Targeted Regulation of Abortion Providers

STATE	REGULATIONS APPLY TO SITES WHERE:*			FACILITY REQUIREMENTS:				CLINICIAN REQUIREMENTS:		
	Surgical Abortion Is Provided		Medication Abortion Is Provided	Structural Standards Comparable to Those for Surgical Centers	Procedure Room Size Specified	Corridor Width Specified	Maximum Distance to Hospital Specified	Transfer Agreement with Hospital	Requires:	
	Outpatient Clinics	Private Doctor Offices							Hospital Privileges	Hospital Privileges or Alternative Agreement
Alabama	X	X	X	X		X	§		▼	X
Arizona	X	X	X	X			30 miles*			X
Arkansas	X	X	X	X	X		30 miles			X[Ω]
Connecticut	X									
Florida	X		X				nearby	X		X
Illinois†										
Indiana	X	X	X	X	X	X	adjacent county			X‡
Kansas	§	§	§	§			§		§	
Kentucky	X		X	X				X		
Louisiana	X	X		X	X		§		▼	X
Maryland	X									
Michigan	X		X	X	X	X	30 minutes	X		
Mississippi	X	X	X	X	X	X	▼		▼	X
Missouri	§			§		§	§		§	
Nebraska	X	X	X		X					
North Carolina	X		X	X				X		
North Dakota							30 miles		X	
Ohio	X			X			30 miles	X		
Oklahoma	X		X	X	X		§		§	X
Pennsylvania	X	X		X	X	X		X		
Rhode Island	X	X	X	X						
South Carolina	X	X	X	X		X				X
South Dakota	X	X	X	X		X				
Tennessee				▼			▼	X	▼	
Texas	X	X	X	▼			▼		▼	X
Utah	X	X	X	X	X		15 minutes		X	
Virginia	X	X	X							
Wisconsin	X		X				§	X	§	
TOTAL	23	14	18	16	9	7	8	8	2	10

STATE	CLINICIAN REQUIREMENTS:
	OB/GYN Certification or Eligibility
Alabama	
Arizona	
Arkansas	
Connecticut	
Florida	
Illinois†	
Indiana	
Kansas	
Kentucky	
Louisiana	§
Maryland	
Michigan	
Mississippi	X
Missouri	
Nebraska	
North Carolina	
North Dakota	
Ohio	
Oklahoma	
Pennsylvania	
Rhode Island	
South Carolina	θ
South Dakota	
Tennessee	
Texas	
Utah	
Virginia	
Wisconsin	
TOTAL	1

§ This law is temporarily enjoined pending a final decision in the courts.

▼ This law is permanently enjoined and is not in effect.

• Applies only to surgical abortions.

† In most states, regulations apply to all abortion providers or apply to providers who perform or administer more than a small number of abortions. In Illinois, requirements apply only to sites where abortion is the primary service.

‡ Indiana law requires an abortion provider to either have admitting privileges or an agreement with another physician who has admitting privileges at a local hospital. A court has blocked a requirement that would have required the agreement with another physician who has privileges to be renewed annually and filed in every hospital in the local area.

θ Only an obstetrician/gynecologist may provide abortions after 14 weeks of pregnancy.

Ω A medication abortion provider must have an agreement with another provider who has hospital admitting privileges. This law is temporarily enjoined pending a final decision in the courts.

[252] *Guttmacher Institute: Targeted Regulation of Abortion Providers*, [website], 2018, https://www.guttmacher.org/state-policy/explore/targeted-regulation-abortion-providers, (accessed 20 July 2018).

9. Abstract

In 2018, one in four women will exercise their right to an abortion in the US, yet their experiences could be drastically different depending on where they live.

The goal of this research was to compile laws found in Texas and Oregon concerning abortion access, and examine the impact on the rights of women living in either state. Population demographics and voter data are analysed to generate an understanding of why restrictive legislation has passed in certain states (e.g. Texas) while others offer women more reproductive freedom and access (e.g. Oregon). Feminist theories have been used to describe the unique issue of women's autonomy within the political arena. International standards are introduced to illustrate discrepancies between US policies and other developed nations, and establish why women's human rights need to be protected in future. Information was sourced from journals, government resources, nongovernmental organisations, news articles, interviews, and case records.

Findings showed that due to the political parties in power, Texas has implemented several restrictive laws, creating multiple barriers especially for low income, minority and rural women to navigate for abortion access. Oregon has no legislative restrictions, and in 2017 the state voted to guarantee coverage for all women, even allocating resources for reproductive healthcare regardless of citizenship status. Oregon has protected the human rights of women by providing accessible and affordable abortion care. Whereas Texas would need to repeal and replace multiple laws in order to successfully uphold and respect the rights of its women.

Keywords:

Abortion	Contraception	Democrat	Liberal Feminism
Oregon	Pro-life	Pro-choice	Republican
Texas			

Kurzfassung

In Jahr 2018 machen 25% der Frauen in den USA von ihrem Recht Gebrauch, Abtreibungen durchführen zu lassen. Die dabei gemachten Erfahrungen sind dennoch stark abhängig vom Wohnort der Frauen.

Das Ziel dieser Studie war eine Sammlung der Gesetze betreffend des Zugangs zu Abtreibungen in den US Bundesstaaten Texas und Oregon und deren Einfluss auf Frauenrechte abhängig vom Wohnort zu evaluieren. Bevölkerungsdemografien und Wählerdaten wurden analysiert um Erklärungen für strengere Gesetzgebung (z.B. Texas) und Staaten mit liberalerer Gesetzgebung, die Frauen mehr reproduktive Freiheiten und Zugang ermöglichen (z.B. Oregon) zu finden. Feministische Theorien wurden verwendet um die Probleme mit der Autonomie von Frauen in der Politik zu beschreiben. Internationale Standards wurden eingeführt um Diskrepanzen zwischen Strategien der USA und anderer Industrienationen aufzuzeigen und um zu begründen, warum Frauenrechte in Zukunft geschützt gehören. Die Quellen hierfür waren Fachblätter, staatliche Ressourcen, Ressourcen von Nichtregierungsorganisationen, Zeitungsartikel, Interviews und Fallbeispiele.

Die Ergebnisse der Studie zeigen, dass von den Regierungsparteien in Texas etliche restriktive Gesetze verabschiedet wurden, die gerade Frauen aus niedrigen Einkommen, aus Minderheiten und aus ländlichen Gegenden beim Thema Abtreibung vor große Hürden stellen. Oregon hingegen hat keine rechtlichen Beschränkungen und im Jahr 2017 wurde bei Wahlen festgelegt, dass für Frauen die eine Abtreibung wählen gesorgt wird unabhängig von der Nationalität. Oregon hat die Frauenrechte durch verfügbare und leistbare Möglichkeiten des Schwangerschaftsabbruchs beschützt, während in Texas ein Aufheben und Ersatz diverser Gesetze notwendig wäre, um die Frauenrechte erfolgreich aufrechtzuerhalten und zu beschützen.

Schlagwörter:

Abtreibung	Verhütung	Demokrat	liberaler Feminismus
Oregon	ProLife	ProChoice	Republikaner
Texas			

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