

Women's Rights on the Right:

The History and Stakes of Modern Pro-Life Feminism

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ABSTRACT

Recently, pro-life advocates have popularized claims that abortion harms rather than helps women. The best known of these arguments are the woman-protective arguments—contentions, such as those endorsed in *Gonzales v. Carhart*, justifying abortion restrictions on the basis of the physical or psychological harms supposedly produced by the procedure. Woman-protective claims, however, represent only one part of a much larger strategy that this Article calls pro-life feminism. The Article follows pro-life activists' use of the term "feminist" or "feminism." As the Article makes clear, activists on competing sides of the abortion issue have contested the meaning of "true" feminism. Taking sides in this struggle has obscured the influence and complexity of ideas that abortion opponents identify with pro-life feminism. These are the lost nuances that the Article seeks to recapture.

For legal scholars, social movement activists, and historians, there is a good deal at stake in better understanding the pro-life feminist law reform movement. In the wake of the 2006 decision in *Carhart* and Justice Ginsburg's dissent in that opinion endorsing equality-based claims, liberals on the Supreme Court may become willing to openly support equality-based arguments for abortion rights. Pro-life feminists have promoted an important counterargument to equality-based justifications for abortion rights: pro-life feminism helps to paint abortion opponents as pro-woman and amenable to the needs of women who pursue higher education or professional careers.

The Article also identifies potential common ground among self-identified feminists with different positions on abortion. Both pro-choice and pro-life scholars have written extensively on how to present their arguments as forwarding (or at least not undermining) women's equal citizenship. However, previous work has not fully captured the complexity or diversity of the pro-life

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feminist movement. Public discussion of pro-life feminism has primarily involved a bitter struggle about who properly counts as a feminist. Lost in this dialogue has been a meaningful consideration of legal issues on which opposing activists might agree: contraception, equal pay for equal work, or state support for parental leave. If we no longer view pro-life feminism as monolithic, we can identify areas of agreement between some of those on opposing sides of the abortion question.

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INTRODUCTION

Can women's equality be ensured without access to legal abortion? Questions of this kind have become central to the abortion debate. Since the mid-1980s, progressive scholars like Ruth Bader Ginsburg and Reva Siegel have argued that equal protection claims would provide a more compelling justification for abortion rights than the privacy rationale set forth in *Roe v. Wade*.¹ When the Supreme Court decided *Planned Parenthood of Southeastern Pennsylvania v. Casey*,² the justices seemed newly aware of the connection between fertility control and women's equal citizenship.³

In response, antiabortion advocates have popularized claims that abortion harms rather than helps women. The best known are the woman-protective arguments, such as those endorsed in *Gonzales v. Carhart*,⁴ that justify abortion

1. See 410 U.S. 113, 153 (1973); see, e.g., Ruth Bader Ginsburg, *Some Thoughts on Autonomy and Equality in Roe v. Wade*, 63 N.C. L. REV. 375, 386 (1985) (arguing that "the Court's *Roe* position is weakened . . . by the opinion's concentration on a medically approved autonomy idea, to the exclusion of a constitutionally based sex-equality perspective"); Reva Siegel, *Reasoning from the Body: A Historical Perspective on Abortion Regulation and Equal Protection*, 44 STAN. L. REV. 261, 351–80 (1992).

2. See 505 U.S. 833 (1992).

3. See, e.g., Andrew Coan, *Is There a Constitutional Right to Select the Genes of One's Offspring*, 63 HASTINGS L.J. 233, 253 (2011); Jack M. Balkin, *Abortion and Original Meaning*, 24 CONST. COMMENT 291, 319–28 (2007); see also *Gonzales v. Carhart*, 550 U.S. 124, 172 (2007) (Ginsburg, J., dissenting).

4. 550 U.S. at 124.

restrictions on the basis of the physical or psychological harms supposedly caused by the procedure.⁵ Woman-protective claims, however, represent only one part of a much larger strategy this Article calls antiabortion feminism. In this Article, I follow activists in their use of the word feminism—their self-identification as feminists or as activists who value working with pro-choice feminists. Those with opposing views of the abortion issue have contested the meaning of “true” feminism. The activists participating in these struggles have obscured the influence and complexity of ideas that abortion opponents identify with pro-life feminism. The Article seeks to recapture these lost nuances.

If we attend better to the complexity of antiabortion feminism, its influence on the abortion debate becomes clear. Organizations like the Susan B. Anthony List (SBAL) have played a vital part in promoting state and federal laws banning sex-selective abortion, defined as any abortion based on sex or gender (and assumed to target primarily female fetuses).⁶ Four states already ban sex-selective abortion.⁷ In a non-binding June 2012 vote, the United States House of Representatives approved the Prenatal Non-Discrimination Act (PRENDA), a proposed federal sex-selective abortion ban, by a vote of 246-168.⁸ PRENDA had some bipartisan support, as twenty Democrats joined 226 Republicans voting for the bill.⁹ Its proponents emphasize that “sex selection abortion reinforces sex discrimination and has no place in a civilized society.”¹⁰

Self-identified feminists in organizations like Live Action have also influenced successful campaigns for laws defunding Planned Parenthood in states like Texas, Kansas, and North Carolina.¹¹ Lila Rose, the leader of Live

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5. For an example of the kinds of pro-woman arguments studied in existing work, see generally Maya Manian, *The Irrational Woman: Informed Consent and Abortion Decision-Making*, 16 DUKE J. GENDER L. & POL'Y 223 (2009); Reva B. Siegel, *The Right's Reasons: Constitutional Conflict and the Spread of Woman-Protective Pro-Life Argument*, 57 DUKE L.J. 1641 (2008); Jeannie Suk, *The Trajectory of Trauma: Bodies and Minds of Abortion Discourse*, 110 COLUM. L. REV. 1193 (2010).
 6. See, e.g., Susan B. Anthony List, *In the Name of Feminism*, SBAL, <http://www.sba-list.org/suzy-b-blog/name-feminism> (last visited Mar. 1, 2013); Susan B. Anthony List, *Planned Parenthood Shows Inconsistency in PRENDA Opposition*, SBAL, <http://www.sba-list.org/suzy-b-blog/planned-parenthood-shows-inconsistency-prenda-opposition> (last visited Jan. 23, 2013). Lila Rose's Live Action has also pushed for PRENDA. See, e.g., *Statement by Live Action on PRENDA Vote*, LIVE ACTION (May 31, 2012), <http://liveaction.org/blog/statement-by-live-action-on-prenda-vote>.
 7. See *Ban on Sex Selection Abortions*, CHRISTIAN SCI. MONITOR, (May 31, 2012), <http://www.csmonitor.com/Commentary/the-monitors-view/2012/0531/Ban-on-sex-selection-abortions-Change-attitudes-toward-girls-instead>.
 8. See, e.g., Tom Feran, *Other Consequences Complicated Abortion Bill*, CLEVELAND PLAIN DEALER, June 12, 2012, at B1.
 9. See, e.g., *House Vote 299: Rejects a Ban on Sex Selection Abortions*, N.Y. TIMES (May 29, 2012), <http://politics.nytimes.com/congress/votes/112/house/2/299>.
 10. *Representative Franks Introduces Susan B. Anthony and Frederick Douglass Prenatal Non-Discrimination Act*, Apr. 7, 2009, 2009 WLNR 6501308.
 11. On the state of defunding laws, see Naomi Wolf, *What Really Lies Behind the "War on Women,"* GUARDIAN, May 24, 2012, 2012 WLNR 10999372. For further study of the defunding movement, see Mary Ziegler, *Sexing Harris: The Law and Politics of the Movement to Defund Planned Parenthood*, 60 BUFF. L. REV. 701 (2012).

Action, has alleged that Planned Parenthood facilitates the oppression of women. In videos circulated by the organization, Planned Parenthood employees fail to report cases of the sexual exploitation of minors and agree to perform sex-selection abortions.¹² These videos reinforce conservative antiabortion feminist arguments about abortion providers' supposed discrimination against women.

Despite its relevance to contemporary debate, scholars have mostly neglected the study of the modern antiabortion feminist movement.¹³ Leading histories of the antiabortion movement describe pro-life feminism as a marginalized, short-lived, and not particularly influential phenomenon.¹⁴ However, antiabortion feminism has been more powerful and relevant than we might believe. In the legislative arena, self-identified feminists influence battles about sex-selective abortion and the defunding of Planned Parenthood. Abortion opponents have also crafted counterarguments to the sex-equality claims set forth by Justice Ginsburg: arguments that true proponents of sex equality should oppose abortion. For these reasons, an understanding of the history and stakes of antiabortion feminism is long overdue.

Legal scholars, social movement activists, and historians can learn a good deal through a better understanding of the antiabortion feminist law reform movement. In the wake of the 2007 decision in *Carhart* and Justice Ginsburg's dissent in that opinion endorsing equality-based claims,¹⁵ liberals on the Supreme Court may become more willing to openly support equality-based arguments for abortion rights, a development noted by scholars across the ideological spectrum, from Professor Cass Sunstein to prominent pro-life attorneys James Bopp, Jr. and Clark Forsythe.¹⁶ Antiabortion feminists have

12. See, e.g., Ziegler, *supra* note 11, at 721–24.

13. The most comprehensive studies focus on what Siegel has called woman-protective arguments—claims that restricting abortion will protect women from the consequences of their own poor decisions. See *supra* note 5 and text accompanying.

14. In one of the landmark studies of the pro-life movement, Kristin Luker describes all pro-life feminists as a “relatively small group.” KRISTIN LUKER, *ABORTION AND THE POLITICS OF MOTHERHOOD* 113 (1984). In their study of the abortion debate, Elizabeth Freeman and Alan Mensch briefly analyze American Citizens Concerned for Life but do not explore the group's relevance or impact. See ELIZABETH FREEMAN AND ALAN MENSCH, *THE POLITICS OF VIRTUE: IS ABORTION DEBATABLE?* 138 (1993). Faye Ginsburg's analysis is equally terse. See FAYE GINSBURG, *CONTESTED LIVES: THE ABORTION DEBATE IN THE AMERICAN COMMUNITY* 118 (1998). Even Keith Cassidy, a scholar who is particularly attentive to the diversity of the pro-life movement, does not do justice to the diversity or influence of pro-life feminism. See Keith Cassidy, *The Right to Life Movement: Sources, Development, and Strategies*, in *THE POLITICS OF ABORTION AND BIRTH CONTROL IN HISTORICAL PERSPECTIVE* 141, 144–47 (Donald Critchlow ed., 1996). For examples of the standard pro-life feminist account of the movement's history, see *Feminists for Life Reveals Suffragists' Pro-life Stand*, P.R. NEWSWIRE, Mar. 14, 1991; *Feminist Launches PAC for Pro-Lifers*, WASH. TIMES, Nov. 7, 1992, at A1.

15. 550 U.S. 124, 172 (2007) (Ginsburg, J., dissenting).

16. See, e.g., Cass R. Sunstein, Op-Ed., *Ginsburg's Dissent May Yet Prevail*, L.A. TIMES, Apr. 20, 2007, at A31; Memorandum from James Bopp, Jr. & Richard Coleson to Whom It May Concern (Aug. 7, 2007), available at <http://operationrescue.org/pdfs/Bopp%20Memo%20re%20State%20HLA.pdf>; Clark D. Forsythe, *An Unnecessary Evil*, FIRST THINGS (Feb. 2003),

promoted an important counterargument to equality-based justifications for abortion rights: pro-life feminism helps to paint abortion opponents as pro-woman and as amenable to the needs of women who pursue higher education or professional careers.

A study of the history of antiabortion feminism also identifies potential common ground among self-identified feminists with different positions on abortion. Both pro-choice and pro-life scholars have written extensively on how to present their arguments as forwarding (or at least not undermining) women's equal citizenship.¹⁷ However, previous work has not fully captured the diversity of the antiabortion feminist movement. Activists and organizations fall along a broad spectrum, with some self-proclaimed pro-life feminists endorsing a traditionalist view of gender roles and a small government providing little support for contraception or health care. However, other movement members who identify as pro-life feminists, like the members of All Our Lives, view contraception as a right and express concern about "the intersecting injustices of sexism, racism, classism, ablism, LGBT phobia, religious discrimination, environmental pollution, and anything else which threatens these rights."¹⁸

Public discussion of antiabortion feminism has primarily involved a bitter

http://www.firstthings.com/article.php3?id_article=437.

17. For a sample of the work calling for a greater emphasis on equality interests in the abortion context, see Jack M. Balkin, *How New Genetic Technologies Will Transform Roe v. Wade*, 56 EMORY L.J. 843, 851 (2007) ("[B]y viewing the abortion right as part of a generalized right of privacy, the Court obscured the relationship between women's reproductive liberty and their equality with men."); Ginsburg, *supra* note 1, at 386; Sylvia A. Law, *Rethinking Sex and the Constitution*, 132 U. PA. L. REV. 955 (1984) ("[T]he development of modern constitutional sex equality doctrine has suffered from a lack of focus on biological reproductive differences between men and women."); Eileen McDonagh, *The Next Step After Roe: Using Fundamental Rights, Equal Protection Analysis to Nullify Restrictive State-level Abortion Legislation*, 56 EMORY L.J. 1173, 1174 (2007) ("As many legal scholars have recommended for decades, the answer to the question of how to strengthen reproductive rights is to add constitutional guarantees under the Equal Protection Clause to the current foundation of abortion rights based upon the Due Process Clause."); Reva Siegel & J. Siegel, *Concurring, in WHAT ROE V. WADE SHOULD HAVE SAID* 63, 63 (Jack M. Balkin ed., 2005) ("Too often, laws that single women out for special treatment in virtue of their maternal role have excluded women from participating as equals with men in core activities of citizenship."); Cass Sunstein, *The Anticaste Principle*, 92 MICH. L. REV. 2410, 2425 (1994) (arguing for the application of Equal Protection Clause analysis where "the law takes a characteristic limited to one group of citizens and turns that characteristic into a source of social disadvantage . . ."). For discussion of the pro-life movement's interest in convincing women of its support, see David Reardon, *Politically Correct vs. Politically Smart: Why Politicians Should Be Both Pro-Woman and Pro-Life*, POST-ABORTION REV., Fall 1994, at 1-3, available at <http://www.afterabortion.info/PAR/V2/n3/PROWOMAN.htm>; J.C. Willke, *Life Issues Institute Is Celebrating Ten Years with a New Home*, LIFE ISSUES CONNECTOR (Life Issues Inst., Cincinnati, Ohio), Feb. 2001, at 1, 4, available at <http://www.lifeissues.org/connector/01feb.html>; see also Bopp, *supra* note 16.
18. See *Mission*, ALL OUR LIVES, <http://www.allourlives.org/about-us/mission/> (last visited Mar. 1, 2013) [hereinafter *Mission*]. For the mission statements of organizations with similar positions, see, e.g., *Mission*, CONSISTENT LIFE <http://www.consistent-life.net/> (last visited Mar. 1, 2013). Pro-life feminists active in the movement in the 1970s, such as Juli Loesch Wiley, continue to participate in organizations that carry on the pro-life feminist tradition from that era. On Wiley's career, see Juli Loesch Wiley, Email Interview with the Author, Mar. 19, 2012.

struggle about who properly counts as a feminist.¹⁹ Lost in this dialogue has been a meaningful consideration of legal issues on which opposing activists might agree: contraception, equal pay for equal work, or state support for parental leave. If we no longer view pro-life feminism as monolithic, we can identify areas of agreement between some of those on opposing sides of the abortion question.

The Article proceeds in four parts. Part I studies the emergence and decline of pro-life feminism in the 1970s. Part II evaluates the reappearance and eventual transformation of pro-life feminism between 1993 and today. Part III analyzes the stakes of this history for current debates about legal abortion and the meaning of feminism. Then, the Article briefly concludes.

I. A TRULY LIBERATED WOMANHOOD: PRO-LIFE FEMINISM IN THE 1970S

Contemporary antiabortion feminists conventionally present their history as beginning in the nineteenth-century, with the rise of first-wave feminism.²⁰ As Linda Kerber has shown, first-wave feminists campaigned for a broad agenda that included votes for women, an increase in the age of sexual consent for women, Prohibition, and laws banning everything from child labor to impure foods.²¹ According to contemporary pro-life feminists, their movement carries on the tradition that emerged with the work of Susan B. Anthony and Elizabeth Cady Stanton in the nineteenth century.²² As this Article shows, the recent history of pro-life feminism is considerably more complex.

A. Women's Rights and Feminists for Life

Before and immediately after *Roe v. Wade*, like most pro-life activists, pro-life feminists were part of a decentralized, mostly state-level attempt to block the liberalization of abortion laws.²³ Some activists identifying as antiabortion feminists joined Feminists for Life (FFL), a group founded in 1973 in Ohio by

19. See, e.g., *infra* notes 232, 236–37 and accompanying text.

20. See, e.g., MARY KRANE DERR ET AL., PRO-LIFE FEMINISM: YESTERDAY AND TODAY (1995). For a study of the use of first-wave feminist history, see Tracy Thomas, *Misappropriating Women's History in the Law and Politics of Abortion*, 36 SEATTLE U. L. REV. 1 (2012).

21. For a history of first-wave feminism, see LINDA K. KERBER, NO CONSTITUTIONAL RIGHT TO BE LADIES: WOMEN AND THE OBLIGATIONS OF CITIZENSHIP (1998); DIANNE DAVIDSON, WOMEN ON THE WARPATH: FEMINISTS OF THE FIRST WAVE (1997); ELLEN CAROL DUBOIS, FEMINISM AND SUFFRAGE: THE EMERGENCE OF AN INDEPENDENT WOMEN'S MOVEMENT IN AMERICA 1848–1869 (1999).

22. See, e.g., David Wagner, *Not Just Any Senatorial Wife, Abraham Leads Pro-Life PAC*, INSIGHT ON THE NEWS, June 2, 1997, at 16.

23. On the pre-*Roe* pro-life movement, see ZIAD W. MUNSON, THE MAKING OF PRO-LIFE ACTIVISTS: HOW SOCIAL MOVEMENT MOBILIZATION WORKS 85 (2010); see also GENE BURNS, THE MORAL VETO: FRAMING CONTRACEPTION, ABORTION, AND CULTURAL PLURALISM IN AMERICA 244–315 (2005). For a documentary history of the pre-*Roe* debate, see generally BEFORE *ROE V. WADE*: VOICES THAT SHAPED THE SUPREME COURT DECISION (Linda Greenhouse & Reva Siegel eds., 2010).

Patricia Goltz and Catherine Callaghan.²⁴ Then a student at the Ohio State University, Goltz unsuccessfully sought to persuade her local chapter of the National Organization for Women (NOW), the nation's leading women's organization, that abortion was antithetical to the beliefs and values of the women's movement.²⁵

FFL set out one view of pro-life feminism: progressive feminists, the argument went, could logically support sex equality while opposing abortion as a degradation of women and as an excuse for men seeking to exploit them. Rather than challenging the stereotyped identification of women as caretakers, FFL criticized abortion for undercutting caretakers' rights. Abortion allowed men to use women sexually without suffering any consequences, and abortion excused the state from supporting women who wanted to balance caretaking and a career. FFL publications endorsed much of the second-wave feminist agenda while insisting that opposition to abortion flowed naturally from that agenda.

In the 1970s, FFL campaigned for several legal reforms favored by feminists supportive of abortion rights. For example, Goltz urged FFL members to fight for an Equal Rights Amendment (ERA) to the federal Constitution.²⁶ FFL members also lobbied for laws allowing married women to take credit in their own names—a reform endorsed by feminist organizations like NOW.²⁷

FFL brought together its support for these second-wave feminist initiatives with the condemnation of abortion. In the early 1970s, the organization created several “pro-woman” arguments for abortion. For example, Goltz called abortion “an insidious form of enslavement to the Playboy’s ‘right to fuck’ [that] has no place in the women’s movement.”²⁸ In Goltz’s view, the availability of legal abortion allowed men who sexually exploited women to avoid paying child support or facing the consequences of their actions.²⁹ FFL also spread claims that legal abortion would result in the disproportionate killing of female fetuses.³⁰ Finally, FFL argued that *Roe* undermined the women’s movement by recognizing a right to be sexually exploited that had no place in that movement.³¹ According to Goltz, *Roe* did not create any rights for women. The

24. See, e.g., MARVIN KRIER MICH, CATHOLIC SOCIAL TEACHING AND MOVEMENTS 212–14 (1998).

25. See *id.* at 212.

26. *The Equal Rights Amendment*, SISTERLIFE J., 1973, at 8–9 (on file with the Schlesinger Library, Harvard University in the Feminists for Life Collection).

27. *Feminists for Life Task Force on Consumer Credit*, FEMINISTS FOR LIFE J., 1972, at 2 (on file with the Schlesinger Library, Harvard University in the Feminists for Life Collection). On NOW’s support for laws allowing married women to obtain credit in their own names, see, e.g., ENCYCLOPEDIA OF WOMEN AND GENDER: SEX SIMILARITIES AND DIFFERENCES AND THE IMPACT OF SOCIETY ON GENDER 460 (2002).

28. Pat Goltz, *Editorial: Woman’s Right to Control Her Own Body*, FEMINISTS FOR LIFE J., 1973, at 6 (on file with the Schlesinger Library, Harvard University in the Feminists for Life Collection).

29. See *id.*

30. George Steven Swan, *Untitled Article*, SISTERLIFE J., 1973, at 1–4 (on file with the Schlesinger Library, Harvard University in the Feminists for Life Collection).

31. See Goltz, *supra* note 28.

right to choose abortion was a “form of enslavement” that represented a “negation,” rather than a fulfillment of “the right to control one’s own body.”³²

B. Rights for Women in the Antiabortion Mainstream

FFL members shared beliefs about sex discrimination law with others in the antiabortion movement. A number of antiabortion activists stressed the importance of finding common ground with feminists who supported abortion rights, particularly on the topics of government funding of maternal care, healthcare, contraception or sex education, and guaranteeing protections against pregnancy discrimination.³³ These advocates played an influential role in the early years of the nation’s largest pro-life organization, the National Right to Life Committee (NRLC).³⁴ This philosophy shaped the NRLC’s pre-*Roe* statement of purpose, which asserted that the organization was “in favor of a legal system that protects the life of the unborn child, while recognizing the dignity of the child’s mother, the rights of its father, and the responsibility of society to provide support and assistance to both the mother and child.”³⁵ The statement of purpose further called for expanded government support for post-birth maternal health care and improved support services for children whose parents were not willing to raise them.³⁶ Working in organizations such as the Reproductive Rights National Network, an organization that fought against sterilization abuse and demanded government support for contraception, health care, and child care, some feminists supportive of abortion rights also called for greater governmental support for caretaking and health care.³⁷ Feminist women’s health activists and pro-lifers with dramatically different views of abortion agreed that the state needed to do more to support mothers and their dependents.

Similarly, in June 1974, the NRLC adopted a major policy resolution proposing that antiabortion advocates work to remove the stigma attached to unwed motherhood and illegitimacy by removing any mention of illegitimacy from birth certificates.³⁸ The NLRC was concerned that stigmatizing unwed motherhood might encourage women to have abortions.³⁹ At the same time,

32. *See id.*

33. For a discussion of the diversity of the pro-life movement, see Cassidy, *supra* note 14, at 141–43; MUNSON, *supra* note 23, at 192.

34. *See, e.g.*, LAURENCE TRIBE, ABORTION: THE CLASH OF ABSOLUTES 146 (1992).

35. PENNSYLVANIANS FOR HUMAN LIFE, NRLC STATEMENT OF PURPOSE (1972) (on file with the Gerald Ford Memorial Library, University of Michigan in the American Citizens Concerned for Life Papers, Box 4).

36. *See id.*

37. *See, e.g.*, REBECCA M. KLUCHIN, FIT TO BE TIED: STERILIZATION AND REPRODUCTIVE RIGHTS IN AMERICA, 1950–1980 200–24 (2011); WENDY KLINE, BODIES OF KNOWLEDGE: SEXUALITY, REPRODUCTION, AND WOMEN’S HEALTH IN THE SECOND WAVE 68–93 (2010).

38. *See* NATIONAL RIGHT TO LIFE COMMITTEE, RESOLUTION 3 (1974), (on file with the Gerald Ford Memorial Library, University of Michigan in the American Citizens Concerned for Life Papers, Box 4).

39. David Reardon, one of the architects of woman-protective pro-life argument, would later make this point. *See* DAVID C. REARDON, ABORTED WOMEN: SILENT NO MORE 324 (1987).

calling for better treatment for unwed mothers had important egalitarian implications. The stigmatization of unwed motherhood, like bans on abortion, reflected a powerful sexual double standard.⁴⁰ “According to the prevailing double standard, the young man who was equally responsible for the pregnancy was not condemned for his actions. It was her fault . . . that she got pregnant.”⁴¹

Many abortion opponents reinforced the sexual double standard, urging their colleagues to attack sexual promiscuity as well as abortion.⁴² Indeed, as leading activist Charles Rice framed the issue, legal abortion was problematic partly because it made promiscuity costless.⁴³ Read in the context of antiabortion politics in the 1960s and 1970s, the NRLC’s resolution reflected a different view of female sexuality: women should be respected whenever they became pregnant.⁴⁴ As then-NRLC member Marjory Mecklenburg would explain later, government “should treat pregnant women, wed or unwed, with some dignity and respect their rights.”⁴⁵

C. Beyond Abortion: The Influence of American Citizens Concerned for Life

Some within the NRLC endorsed legal reforms promoted by feminists supportive of abortion rights: efforts to eliminate a sexual double standard, to remove the stigma attached to unwed motherhood, and to increase government funding for maternal care and healthcare.⁴⁶ Later in the 1970s, antiabortion activists created an organization, American Citizens Concerned for Life (ACCL), which clearly stressed the importance of working with pro-choice feminists albeit not on the issue of abortion itself.⁴⁷ By “build[ing] good will even among

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40. See LESLIE J. REAGAN, *WHEN ABORTION WAS A CRIME: WOMEN, MEDICINE, AND LAW IN THE UNITED STATES, 1867–1973*, at 28 (1998).
 41. ANN FESSLER, *THE GIRLS WHO WENT AWAY: THE HIDDEN HISTORY OF WOMEN WHO SURRENDERED CHILDREN FOR ADOPTION IN THE DECADES BEFORE ROE V. WADE* 8–9 (2006).
 42. See, e.g., Patrick T. Conley & Robert J. McKenna, *The Supreme Court on Abortion—A Dissenting Opinion*, 19 CATH. LAW. 19, 24 (1973) (expressing concern that “[a] society that countenances the brutality of abortion is one in which psychological ills, irreverence for life, and sexual promiscuity are likely to proliferate”); CHARLES E. RICE, *A VANISHING RIGHT TO LIVE: AN APPEAL FOR A RENEWED REVERENCE FOR LIFE* 125 (1969).
 43. RICE, *supra* note 42, at 125 (“Promiscuity is the logic of birth control; but to have promiscuity with impunity there must also be abortion”).
 44. NATIONAL RIGHT TO LIFE COMMITTEE, *supra* note 38.
 45. *Abortion—Part IV: Hearing on S.J. Res. 6, S.J. Res. 10 and 11, and S.J. Res. 91 Before the Subcomm. on Constitutional Amendments of the S. Comm. on the Judiciary*, 94th Cong. 646 (1976) (statement of Marjory Mecklenburg, President, American Citizens Concerned for Life).
 46. On feminists’ attack on the sexual double standard in the 1960s, see STEVI JACKSON & SUE SCOTT, *FEMINISM AND SEXUALITY: A READER* 4 (1996). See generally SANDRA MORGEN, *INTO OUR OWN HANDS: THE WOMEN’S HEALTH MOVEMENT IN THE UNITED STATES, 1969–1990* (2002) (discussing feminist healthcare reform in the 1960s and 1970s); MICHELLE MURPHY, *SEIZING THE MEANS OF REPRODUCTION: ENTANGLEMENTS OF FEMINISM, HEALTH, AND TECHNOSCIENCE* 25–56 (2012).
 47. See Mary Ziegler, *The Possibility of Compromise: Antiabortion Moderates After Roe v.*

opponents,” the organization could achieve “a reputation for competence and credibility.”⁴⁸ Showing concern for “other questions of social justice” would also allow the organization to show its support “for the well being of children and families, not just their existence at a subsistence level.”⁴⁹

ACCL members played an important part in political struggles focused on pregnancy discrimination and government-funded contraception.⁵⁰ ACCL activists did not always identify themselves as feminists.⁵¹ The organization worked closely with feminist organizations on contraception access and sex discrimination law as did feminists supportive of abortion rights.⁵² For this reason, a history of antiabortion feminism cannot be complete without an understanding of the ACCL’s beliefs and contributions.

At first blush, the ACCL appears to be small and relatively short-lived: it was founded prior to *Roe*, active beginning in 1974, and no longer functioning by the mid-1980s.⁵³ However, during the 1970s, the ACCL played an important part in the struggle for the Pregnancy Discrimination Act and federal laws funding contraception. The ACCL’s platform represented a previously unexplored approach to antiabortion feminism. In order to appear legitimate and respectable, the ACCL encouraged abortion opponents to identify common ground with those on the other side of the abortion issue, particularly since the pro-life movement had an obligation to help women avoid the need for abortion.⁵⁴ Before its decline in the late 1970s, the ACCL’s program led its members to work productively with progressive feminists on issues from contraceptive funding to pregnancy discrimination.⁵⁵

Given the organization’s influence, it is worth examining its members’ perspective in depth. In congressional testimony, for example, Warren Schaller, the organization’s first Executive Director, articulated the organization’s position that “women should be able to control their own reproductive functions and

Wade, 1973-1980, 87 CHI.-KENT L. REV. 571, 578-79 (2012).

48. WILLIAM C. HUNT & JOSEPH A. LAMPE, STRATEGY CONSIDERATIONS FOR ACCL INVOLVEMENT IN ABORTION AND RELATED ISSUES 5 (1974) (on file with the Gerald Ford Memorial Library, University of Michigan in the American Citizens Concerned for Life Papers, Box 8).

49. *Id.* (internal quotation marks omitted).

50. See, e.g., Ziegler, *supra* note 47, at 579-84.

51. For the organization’s statement of its goals and identity, see AMERICAN CITIZENS CONCERNED FOR LIFE, TO BUILD A CARING SOCIETY: THE GOALS OF AMERICAN CITIZENS CONCERNED FOR LIFE (1974) (on file with the Gerald Ford Memorial Library, University of Michigan in the American Citizens Concerned for Life Papers, Box 15); ACCL PHILOSOPHY AND OBJECTIVES (1978), (on file with the Gerald Ford Memorial Library, University of Michigan in the American Citizens Concerned for Life Papers, Box 15); Hunt and Lampe, *supra* note 48, at 5; FRED E. MECKLENBURG, BUILDING BRIDGES INSTEAD OF WALLS, 3 (c. 1975) (on file with the Gerald Ford Memorial Library, University of Michigan in the American Citizens Concerned for Life Papers, Box 15).

52. See Ziegler, *supra* note 47, at 582-84.

53. For an example of this perspective, see FREEMAN & MENSCH, *supra* note 14, at 138.

54. HUNT & LAMPE, *supra* note 48.

55. See Ziegler, *supra* note 47, at 582-84.

couples should be able to determine the size of their family.”⁵⁶ Similarly, in a 1975 speech, Frederick Mecklenburg, another ACCL leader, urged his colleagues to find areas of agreement with supporters of abortion rights: “[o]n the subject of building walls, if we persist in avoiding and rejecting the help of concerned citizens who may promote sex education or family planning programs or welfare programs to help the unwed, we deserve to be left frustrated and angry.”⁵⁷

He went on to describe the ACCL’s vision of antiabortion activism: a belief that opposing abortion morally required activists to “work harder than ever . . . to make abortion unnecessary.”⁵⁸ He endorsed more “medical assistance for the unwed mother and her baby, programs to help keep pregnant girls in public schools, . . . and provision for daycare centers and training.”⁵⁹ A second and equally important set of proposals involved women’s rights to prevent pregnancy. Frederick Mecklenburg did not endorse sexual liberation.⁶⁰ But “good or bad,” as he put it, “the sexual revolution [was] real.”⁶¹ Women could avoid abortion only if they could effectively avoid unwanted pregnancies.⁶²

The ACCL promoted its philosophy by lobbying for contraceptive funding and for protections against pregnancy discrimination. In campaigning for and testifying on behalf of the so-called Adolescent Health Services and Pregnancy Prevention Act of 1978, for example, Marjory Mecklenburg described her position as one “on which people who differ on questions of abortion legality or abortion funding should agree.”⁶³ As Mecklenburg would emphasize later, other organizations, some of them supportive of abortion rights, worked in a broad coalition supporting the legislation.⁶⁴

The ACCL’s influence was also apparent in its public response to the Supreme Court’s 1976 decision in *General Electric Company v. Gilbert*.⁶⁵ In *Gilbert*, the Court had held that the systematic exclusion of pregnancy from disability coverage was not, under Title VII, sex discrimination.⁶⁶ In doing so, the Court effectively barred any pregnancy-discrimination claim, since an earlier

56. *Abortion Part III: Testimony Before the Subcomm. on Constitutional Amendments of the S. Judiciary Comm.*, 93d Cong. 164 (1974) (statement of Warren Schaller, Executive Director, American Citizens Concerned for Life).

57. MECKLENBURG, *supra* note 51, at 3.

58. *Id.* at 1.

59. *Id.* at 2.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Testimony on the Adolescent Health Servs. and Pregnancy Prevention & Care Act of 1978*, 94th Congress 431 (1978) (statement of Marjory Mecklenburg, President, American Citizens Concerned for Life).

64. See AMERICAN CITIZENS CONCERNED FOR LIFE, NO VEHICLE QUITE LIKE OURS (1978) (on file with the Gerald Ford Memorial Library, University of Michigan in the American Citizens Concerned for Life Papers, Box 15).

65. *Gen. Electric Co. v. Gilbert*, 429 U.S. 125 (1976).

66. See *id.* at 138–40, 146.

decision, *Geduldig v. Aiello*, held that pregnancy discrimination was constitutional under the Equal Protection Clause of the Fourteenth Amendment.⁶⁷ The ACCL immediately spoke out against *Gilbert*, arguing that discrimination against pregnant women coerced them to have abortions and constituted impermissible sex discrimination.⁶⁸

The ACCL's campaign to undo *Gilbert* reveals the complexity of the views held by its members on sex equality. These nuances become clear through an exploration of the relationship between the ACCL and feminist members of the Committee to End Discrimination Against Pregnant Workers (CEDAPW), a coalition of labor, civil rights, and women's groups that included leading abortion-rights supporters like the National Organization for Women (NOW) and the American Civil Liberties Union (ACLU).⁶⁹ Members of ACCL and CEDAPW lobbied together for a federal ban on pregnancy discrimination. Spokeswomen for the two organizations offered sometimes radically different visions of why women needed protection against pregnancy discrimination. Representatives of the two groups agreed, however, on a fundamental point: true reproductive choice required government protection against sex discrimination, particularly for women who did not want to have to sacrifice their careers.

The complex relationship between the ACCL and CEDAPW began to take shape when CEDAPW adopted views similar to those expressed in a *New York Times* editorial by its co-chairwoman, Susan Deller Ross, and Ruth Bader Ginsburg, then a professor at Columbia Law School and the co-founder of the ACLU Women's Rights Project.⁷⁰ In the January 1977 editorial, Ginsburg and Deller Ross contended that women's capacity to become pregnant was at the root of all discrimination against women in the workplace.⁷¹

Deller Ross and some of her allies, including Professor Wendy Williams of Georgetown University Law School, offered similar arguments when hearings began in Congress on the Pregnancy Discrimination Act (PDA), a federal law intended to overturn *Gilbert*. During hearings on April 4, 1977, for example, Williams asserted that "[t]he common thread of justification running through most policies that discriminated against women . . . rested ultimately on the capacity and fact of pregnancy."⁷² Deller Ross also insisted that pregnancy-based bias served as "the central justification of and support for discrimination against

67. See *Geduldig v. Aiello*, 417 U.S. 484, 494, 496–97 n.20 (1974).

68. See Ziegler, *supra* note 47, at 582.

69. See, e.g., Deborah Dinner, *The Costs of Reproduction: History and the Legal Construction of Sex Equality*, 46 HARV. C.R.-C.L. L. REV. 415 (2011) (recounting the founding of the CEDAPW); ROBERT H. BLANK, *FETAL PROTECTION IN THE WORKPLACE: WOMEN'S RIGHTS, BUSINESS INTERESTS AND THE UNBORN* 38 (1993).

70. See Ruth Bader Ginsburg & Susan Deller Ross, *Pregnancy and Discrimination*, N.Y. TIMES, Jan. 22, 1977, at A33.

71. *Id.*

72. *Discrimination on the Basis of Pregnancy: Testimony Before the Subcomm. on Labor of the S. Comm. on Human Res.*, 95th Cong. 113 (1977) (statement of Wendy Williams, Professor, Georgetown University Law Center) [hereinafter *Statement of Wendy Williams*].

women workers.”⁷³

In her own April 1977 testimony, ACCL General Counsel Jacqueline Nolan-Haley offered strikingly different arguments for the protections against pregnancy discrimination that both CEDAPW and ACCL supported. Nolan-Haley framed the PDA partly as a woman-protective measure, and she described pregnant women as “the most vulnerable members of the work force.”⁷⁴ Whereas Williams focused on the devastating costs in benefits and seniority tied to maternity leave, Nolan-Haley stressed her disagreement with the idea that conception and pregnancy were voluntary.⁷⁵ For many women who found abortion to be wrong, Nolan-Haley explained, continued pregnancy became the only viable option, but it could hardly be described as voluntary or desirable.⁷⁶ Meanwhile, as Williams and Deller Ross emphasized discrimination against all working women, Nolan-Haley spent more time discussing bias against women who chose childbirth over abortion.⁷⁷ Williams and Nolan-Haley agreed, however, that *Gilbert* would coerce women to have abortions in order to save their jobs.⁷⁸

Between April and September 1977, the ACCL further developed the argument that true reproductive choice required state protection against sex discrimination. The evolution of the ACCL position began in late April 1977, when the organization issued a press release focusing on the fact that *Gilbert* denied women reproductive freedom. If a woman faced the possibility of losing her job, the press release asserted, her decision to choose abortion could “not be said to be the product of free choice but of economic coercion.”⁷⁹

Developments in the summer and fall of 1977 tested the ACCL’s commitment to this principle. Members of Congress in both the House and the Senate, including abortion opponents Senator Thomas Eagleton (D-MO) and Representative Edward Beard (D-RI), introduced amendments providing that the proposed PDA would not require employer coverage of abortion or post-abortion care.⁸⁰ In legislative testimony, the ACCL supported the PDA whether or not it

73. *Discrimination on the Basis of Pregnancy: Testimony Before the Subcomm. on Labor of the S. Comm. on Human Res.*, 95th Cong. 149–51 (1977) (statement of Susan Deller Ross, Co-Chair, Comm. to End Discrimination Against Pregnant Workers).

74. *Discrimination on the Basis of Pregnancy: Testimony Before the Subcomm. on Labor of the S. Comm. on Human Res.*, 95th Cong. 432, 435–36 (1977) (statement of Jacqueline Nolan-Haley, General Counsel, American Citizens Concerned for Life) [hereinafter *Statement of Jacqueline Nolan-Haley*].

75. Compare *Statement of Wendy Williams*, *supra* note 72, at 132–40, with *Statement of Jacqueline Nolan-Haley*, *supra* note 74, at 435–40.

76. See *Statement of Jacqueline Nolan-Haley*, *supra* note 74, at 436–40.

77. See *supra* note 75 and accompanying text.

78. See *id.*

79. See Press Release, American Citizens Concerned for Life, *Pregnancy Discrimination*, (Apr. 29, 1977) at 1 (on file with the Gerald Ford Memorial Library, University of Michigan in the American Citizens Concerned for Life Papers, Box 15).

80. See, e.g., Martin Tolchin, *A House Panel Bars Curb on Abortions in Women’s Aid Bill*, N.Y. TIMES, Feb. 3, 1978, at A11 (discussing Beard Amendment); *Senate Votes Pregnancy Benefits in Disability Plans for Workers*, N.Y. TIMES, Sept. 17, 1977, at 8 (discussing

included a pro-life amendment.⁸¹

Dr. Dorothy Czarnecki, a leading member of the ACCL, offered some explanation as to why an organization opposed to abortion would take this position.⁸² She stated that the ACCL supported working women.⁸³ She reiterated the ACCL's arguments about reproductive choice and freedom from coercion "into a backup method of destructive obstetrics, such as abortion."⁸⁴ Members of Congress supportive of the pro-life amendment to the PDA pressed Czarnecki on whether her organization would support the bill if it would require employers to cover treatment for women who had undergone an abortion.⁸⁵ She responded that the ACCL would support the bill even under such circumstances.⁸⁶ Czarnecki emphasized that the legislation would not coerce women to make any decision, including one in favor of childbirth.⁸⁷ As Czarnecki explained, the law "would encourage a woman to keep a pregnancy or do what she wants. It gives women a choice."⁸⁸

The PDA passed in 1978, but the struggle for it created a sometimes uneasy partnership between members of the ACCL and CEDAPW.⁸⁹ Nolan-Smith asserted that women remained vulnerable and in need of special legal protection, while theorists like Wendy Williams described such views about female vulnerability as pernicious stereotypes.⁹⁰ ACCL spokespersons believed abortion to be wrong, a perspective not shared by Ginsburg or other CEDAPW members.⁹¹ Nonetheless, as we have seen, ACCL members, like feminists who supported abortion rights, endorsed state-sponsored family planning services and argued that women should have welfare rights and freedom from sex discrimination—both of which would make reproductive decisions truly voluntary and meaningful.

Together, the ACCL and FFL offered different perspectives on what it might mean to be an antiabortion feminist. Both organizations encouraged their

Eagleton Amendment).

81. See, e.g., *Legislation to Prohibit Discrimination on the Basis of Pregnancy: Testimony Before the H. Subcomm. on Emp't Opportunities of the Comm. on Education and Labor*, 95th Cong. 62 (1977) (statement of Dr. Dorothy Czarnecki, Member, American Citizens Concerned for Life) [hereinafter *Statement of Dorothy Czarnecki*]

82. *Statement of Dorothy Czarnecki*, *supra* note 81, at 62–66.

83. *Id.* at 66.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. See Reva B. Siegel, *Employment Equality Under the Pregnancy Discrimination Act of 1978*, 94 YALE L.J. 929, 929–56 (1985).

90. See *supra* note 74 at 436–40.

91. Indeed, before *Roe*, Ginsburg litigated *Struck v. Secretary of Defense*, 460 F.2d 1372 (1971), a sex discrimination case that "gently gesture[d] in the direction of the link between sex discrimination and burdensome regulations of abortion." Neil S. Siegel and Reva B. Siegel, *Struck By Stereotype: Justice Ruth Bader Ginsburg on Pregnancy Discrimination as Sex Discrimination*, 59 DUKE L.J. 771, 792 (2010).

members to identify areas of agreement with supporters of abortion rights. For the ACCL, this effort involved reforms that would make abortion less necessary and that would support women who carried pregnancies to term. For members of both the ACCL and FFL, pro-life feminism involved efforts to ban sex discrimination.

D. The Decline of Pro-Life Feminism

Organizations like the ACCL and FFL influenced debate about the PDA and contraceptive funding. However, for several reasons, both organizations gradually lost influence. In the late 1970s and early 1980s, the New Right mobilized and forged an influential partnership with the pro-life movement.⁹² The New Right offered financial support and political influence to abortion opponents, and as its leaders impacted the pro-life agenda, organizations like FFL and the ACCL found themselves marginalized.⁹³ In the same period, Phyllis Schlafly and opponents of the Equal Rights Amendment (ERA) stressed that the women's movement had endorsed abortion rights and excluded any women who disagreed.⁹⁴ ERA opponents helped to convince antiabortion activists that it was politically impossible to oppose abortion while supporting the women's movement. Finally, pro-choice organizations like NOW, the National Abortion Rights Action League (NARAL), and the Planned Parenthood Federation of America (Planned Parenthood) began arguing that pro-lifers and anti-feminists were one and the same.⁹⁵ By the start of the 1980s, for all of these reasons, organizations like the ACCL and FFL lost influence, and antiabortion feminism came to seem a contradiction in terms.

First, the ultimately unsuccessful battle about the ERA played an important part in the marginalization of pro-life feminism. Proposed by first-wave feminist Alice Paul in 1923, the ERA would have provided that "equality of rights under the law shall not be abridged in the United States or by any State on account of sex."⁹⁶ In the early 1970s, building on litigation under the Fourteenth Amendment or Title VII of the Civil Rights Act of 1964, feminists reintroduced the ERA, launching a constitutional struggle that would last more than a decade.⁹⁷ Initially, the ERA seemed likely to pass, but by 1972, a number of

92. See, e.g., CYNTHIA GORNEY, ARTICLES OF FAITH: A FRONTLINE HISTORY OF THE ABORTION WARS 347 (1998); MICHELE MCKEEGAN, ABORTION POLITICS: MUTINY IN THE RANKS OF THE RIGHT 18–25 (1992).

93. See, e.g., Ziegler, *supra* note 47, at 574.

94. See, e.g., DONALD CRITCHLOW, PHYLLIS SCHLAFLY AND GRASSROOTS CONSERVATISM: A WOMAN'S CRUSADE 281 (2005) (on the creation of the relationship between ERA and abortion opponents); BEFORE *ROE V. WADE*, *supra* note 23, at 279.

95. See, e.g., *infra* notes 136, 143, and accompanying text.

96. H.J. Res. 75, 68th Cong. (1923)

97. See, e.g., Serena Mayeri, *Constitutional Choices: Legal Feminism and Historical Dynamics of Change*, 92 CALIF. L. REV. 755, 761, 795 (2004) ("In the new climate of feminist mobilization and concomitantly increasing publicity, the ERA had become a promising focal point for women's rights activism.").

antifeminist groups formed to stall its progress.⁹⁸

A veteran conservative activist and former congressional candidate, Schlafly launched a powerful campaign to defeat the ERA. Initially, her organization, Stop Taking Our Privileges Equal Rights Amendment (STOP ERA), focused on the impact of the ERA on homemakers' rights and divorce law rather than on the connection between the Amendment and abortion.⁹⁹ In May 1972, for example, *The Phyllis Schlafly Report* argued: "[the] ERA will wipe out the financial obligation of a husband and a father to support his wife and children—the most important of all women's rights."¹⁰⁰

Later in the 1970s, Schlafly recognized that "feminist support for abortion rights had imbued the abortion issue with associations that could be used to mobilize a wide array of cultural conservatives."¹⁰¹ In 1974, *The Phyllis Schlafly Report* contended: "ERA Means Abortion."¹⁰² As Schlafly explained: "The women's libbers expect E.R.A. to be the constitutional means to assure and make permanent their goal of unlimited abortion on demand."¹⁰³ Schlafly contended that the ERA would expand women's abortion rights: while the Supreme Court had upheld state-level bans on the public funding for abortion in 1977, the story went, the ERA would make "[a]ny restriction of abortion" unconstitutional since such a law would be viewed as "sexist" and impacting "one sex only."¹⁰⁴

These efforts made an impact on pro-life activists. Leaders of the NRLC began urging its members to protest the federal funding of International Women's Year (IWY), a major feminist meeting, suggesting that IWY would promote abortion.¹⁰⁵ Antiabortion newspapers carried stories protesting the alleged expulsion of abortion opponents from a series of meetings in the lead-up to IWY.¹⁰⁶ In 1977, the NRLC went so far as to vote for a resolution opposing

98. See, e.g., Mary Frances Berry, *WHY ERA FAILED: POLITICS, WOMEN'S RIGHTS, AND THE AMENDING PROCESS OF THE CONSTITUTION* 66 (1988) (describing the foundation of STOP ERA).

99. See, e.g., DAVID FARBER, *THE RISE AND FALL OF MODERN AMERICAN CONSERVATISM: A SHORT HISTORY* 145 (2010); SERENA MAYERI, *REASONING FROM RACE: FEMINISM, LAW, AND THE CIVIL RIGHTS REVOLUTION* 82 (2011); CHRISTINE STANSELL, *THE FEMINIST PROMISE: 1792 TO THE PRESENT* 341 (2010).

100. Phyllis Schlafly, *The Fraud Called the ERA*, PHYLLIS SCHLAFLY REPORT, May 1972, at 1 (on file with the Schlesinger Library, Harvard University in the Phyllis Schlafly Report Collection).

101. *BEFORE ROE V. WADE*, *supra* note 23, at 279.

102. See, e.g., ILENE ROSE FEINMAN, *CITIZENSHIP RITES: FEMINIST SOLDIERS AND FEMINIST ANTIMILITARISTS* 116 (2000).

103. Phyllis Schlafly, *ERA's Assist to Abortion*, PHYLLIS SCHLAFLY REPORT (1974) (on file with the Gerald Ford Memorial Library, University of Michigan in the American Citizens Concerned for Life Papers, Box 17). For analysis of Schlafly's shifting strategies and her role in the ERA debate more generally, see JANE MANSBRIDGE, *WHY WE LOST THE ERA* 104 (1986); DONALD T. CRITCHLOW, *PHYLLIS SCHLAFLY: GRASSROOTS CONSERVATISM AND A WOMAN'S CRUSADE* 212–242 (2005).

104. See PHYLLIS SCHLAFLY, *THE POWER OF THE POSITIVE WOMAN* 89 (1977).

105. See, e.g., Ziegler, *supra* note 47, at 586.

106. See *id.*

the ERA.¹⁰⁷

Pro-life feminists also lost ground when the New Right and Religious Right began to reshape American politics. Social conservative leader Paul Weyrich, a veteran political operative, identified abortion as an important wedge issue that could bring socially conservative Democrats into the Republican Party fold.¹⁰⁸ Weyrich helped to engineer the creation of the New Right and the Religious Right, political movements that brought together opposition to abortion and the ERA.¹⁰⁹ Significantly, as the Article will show, the New Right and Religious Right offered the pro-life movement valuable financial support and political influence. As the pro-life movement identified more closely with social conservatism, feminism became synonymous with the pro-choice movement.

As they described it, “leaders of the New Right rose from the ashes of the Watergate scandal: the result of ‘impatience with the shambles of the Nixon-Ford Administration.’”¹¹⁰ Weyrich, a co-founder of the Heritage Foundation, a conservative think-tank, and a co-founder of the Committee for the Survival of a Free Congress (CSFC),¹¹¹ a group dedicated to electing social conservatives to Congress, saw his mission as the creation of a grassroots, politically pragmatic Right, a complement to the intellectuals who had dominated conservatism.¹¹² He explained to the press in November 1977, “We [now] talk about issues that people care about, like gun control, abortion, taxes, and crime.”¹¹³ Weyrich’s organizations provided valuable training and money to fledgling social conservative organizations: by 1978, the CSFC and other conservative political action committees, including the National Conservative Political Action Committee (NCPAC), had raised more than \$3 million for conservative candidates.¹¹⁴ While Weyrich provided political strategy for these groups, Richard Viguerie and his direct-mail organization offered lobbying and

107. See *id.* at 589.

108. See MCKEEGAN, *supra* note 92, at 20–21 (explaining that abortion was chosen as the “keystone” of the Christian organizing strategy because it could divide the Democratic Party).

109. See, e.g., Robert Post & Reva B. Siegel, *Roe Rage: Democratic Constitutionalism and Backlash*, 42 HARV. C.R.-C.L. L. REV. 373, 421 n.226 (2007) (“It was Weyrich’s idea to blur the distinctions between secular right-wingers, fundamentalist Protestants, and anti-abortion Catholics by merging abortion into the panoply of new right, ‘pro-family issues.’”).

110. See Ziegler, *supra* note 47, at 588 (citing Barry Sussman, “New Right” in *American Politics May Be Just an Expression of Discontent*, WASH. POST, Mar. 5, 1978, at C3).

111. *Id.*

112. See, e.g., DOMINIC SANDBROOK, *MAD AS HELL: THE CRISIS OF THE 1970S AND THE RISE OF THE POPULIST RIGHT* 330–31 (2011) (describing how Weyrich envisioned the New Right going “beyond think tanks and lobby groups” to include “ordinary people”).

113. DONALD T. CRITCHLOW & NANCY MACLEAN, *DEBATING THE AMERICAN CONSERVATIVE MOVEMENT: 1945 TO THE PRESENT* 161 (2009).

114. Chip Berlet, *The New Political Right in the United States: Reaction, Rollback, and Resentment*, in *CONFRONTING THE NEW CONSERVATISM: THE RISE OF THE RIGHT IN AMERICA* 71, 83 (Michael J. Thompson ed., 2007); ALAN CRAWFORD, *THUNDER ON THE RIGHT: THE “NEW RIGHT” AND THE POLITICS OF RESENTMENT* 70 (1980); DANIEL K. WILLIAMS, *GOD’S OWN PARTY: THE MAKING OF THE CHRISTIAN RIGHT* 169 (2010).

fundraising services.¹¹⁵ In 1980, Viguerie had raised between \$35 and \$40 million for his clients.¹¹⁶

The newly powerful Religious Right worked closely with Weyrich and Viguerie.¹¹⁷ The Religious Right attracted a variety of religious conservatives opposed to busing, affirmative action, the ERA, abortion, and Supreme Court decisions, such as *Engel v. Vitale*,¹¹⁸ restricting school prayer.¹¹⁹ Historians point to a number of long- and short-term trends that contributed to the rise of this form of social conservatism. For example, the fragmentation of the civil-rights movement of the 1950s and 1960s, the rapid demographic growth of evangelical Protestants, and the migration of a significant number of Americans to states in the Sunbelt.¹²⁰ Members of the Religious Right themselves claimed to have been inspired by important cultural, social, and economic changes that took place in the 1960s and 1970s: the Supreme Court had banned school prayer and had legalized abortion, the women's movement had won influential allies in criticizing some aspects of the traditional family, and gays and lesbians became more visible and more vocal in demanding equal treatment.¹²¹

It made a good deal of strategic sense for pro-lifers to forge a political alliance with the New Right and Religious Right.¹²² In the late 1970s, the

115. On Viguerie's direct-mail services, see SARA DIAMOND, *SPIRITUAL WARFARE: THE POLITICS OF THE CHRISTIAN RIGHT* 57–58 (1989) (describing how Viguerie raised \$100,000 in his first year and mailed “more than 20 million letters” by 1969); DAVID M. RICCI, *THE TRANSFORMATION OF AMERICAN POLITICS: THE NEW WASHINGTON AND THE RISE OF THINK TANKS* 167 (1993) (explaining that Viguerie saw direct mail as a way to advertise “the ideas of organizations or causes that are outside ‘the mainstream’”).

116. SANDBROOK, *supra* note 112, at 329. For further discussion of Viguerie's direct mail empire, see Gillian Peele, *American Conservatism in Historical Perspective*, in *CRISIS OF CONSERVATISM?: THE REPUBLICAN PARTY, THE CONSERVATIVE MOVEMENT AND AMERICAN POLITICS AFTER BUSH* 15, 22 (Joel D. Aberbach & Gillian Peele eds., 2011).

117. See SANDBROOK, *supra* note 112, at 357.

118. 370 U.S. 421 (1962).

119. See Joel Kotkin, *Ready on the Right: Christian Soldiers Are on the March*, WASH. POST Aug. 25, 1979, <http://www.washingtonpost.com/wp-dyn/content/article/2007/05/15/AR2007051501268.html>. Jerry Falwell, the head of the Moral Majority, a leading Religious Right organization, stressed the diversity of his own organization and of social conservatives more generally. *Id.*

120. See generally SARA DIAMOND, *NOT BY POLITICS ALONE: THE ENDURING INFLUENCE OF THE CHRISTIAN RIGHT* (1998) (detailing how the Christian right used ideas of “family values” to infuse evangelical beliefs into local and national discussions on abortion); DARREN DOCHUK, *FROM BIBLE BELT TO SUNBELT: PLAIN-FOLK RELIGION, GRASSROOTS POLITICS, AND THE RISE OF EVANGELICAL CONSERVATISM* (2011) (explaining how evangelicals organized a powerful political machine that inspired Richard Nixon's “Southern Solution,” and played an influential role in the victories of Ronald Reagan); CLYDE WILCOX & CARIN ROBINSON, *ONWARD CHRISTIAN SOLDIERS?: THE RELIGIOUS RIGHT IN AMERICAN POLITICS* (4th ed. 2010) (describing the expansion of the Christian Right during the Bush Administration).

121. See David Snowball, *CONTINUITY AND CHANGE IN THE RHETORIC OF THE MORAL MAJORITY* 94–100 (1991); *What Is the Moral Majority?*, in *THE GENERAL MATERIALS OF THE MORAL MAJORITY* (Aug. 1979) (on file with Liberty Univ.).

122. GORNEY, *supra* note 92, at 347 (explaining that pro-lifers embraced “the New Right, with the direct mail expertise, the money-funneling PACs, and the splendid surge of reinforcements the New Right leaders appeared to have summoned from the ranks of the

antiabortion movement struggled financially and remained politically isolated. For example, the NRLC, the largest national antiabortion organization, found itself \$25,000 in debt in 1978.¹²³ By contrast, the New Right and Religious Right commanded impressive financial resources and political influence. In the same period, one influential group, Christian Voice, had 100,000 members and a governing board that included fourteen members of Congress.¹²⁴ The Moral Majority, another Religious Right organization, had a \$3 million budget in its first year, one third of which was raised in one month alone.¹²⁵ Described by its founder Jerry Falwell as a “coalition capable of steering America away from liberal, humanist and secular tendencies,” the Moral Majority was also quickly establishing its political influence.¹²⁶ By December 1979, Falwell was reaching an audience of 2.5 million and was raising \$1 million a week in mail contributions.¹²⁷

United, social conservatives and abortion opponents also appeared likely to be an influential voting block. *Newsweek* correspondent Allan Mayer reported that approximately 2 million new voters in 1980 would be fundamentalist Christians.¹²⁸ In July 1979, Benjamin Armstrong, the director of the National Association of Religious Broadcasters, predicted that the number would be even higher, since on a weekly basis, religious broadcasters reached an estimated 47 percent of the American population.¹²⁹

For the most part, organizations in the Religious Right or the New Right identified with antifeminism. As Michelle McKeegan explains: “[I]t was the women’s movement that first galvanized born again Christians to political action.”¹³⁰ Nationally, as a spokesperson for the Moral Majority explained in the *New York Times* in August 1980, evangelicals committed to ending abortion were also necessarily opposed to “the proposed equal rights amendment, civil rights for homosexuals, and all who advocate those things.”¹³¹ By allying with social conservatives, groups like the NRLC became more hostile to the reforms sponsored by both pro-choice and pro-life feminists, such as the ERA.¹³² Leaders

Protestant evangelicals”).

123. See, e.g., CONNIE PAIGE, *THE RIGHT TO LIFERS: WHO THEY ARE, HOW THEY OPERATE, AND HOW MAKE THEIR MONEY* 85–87 (1983).

124. See, e.g., Kotkin, *supra* note 119.

125. See *id.*

126. *Id.*

127. See Maxwell Glen, *The Electronic Ministers Listen to the Gospel According to the Candidates*, NAT’L J., Dec. 22, 1979, at 2142–43.

128. Allan Mayer, *A Tide of Born-Again Politics*, NEWSWEEK, Sep. 15, 1980, at 28.

129. *Id.*

130. MCKEEGAN, *supra* note 92, at 18–19 (describing how pro-life organizations saw abortion as “upset[ting] the natural division of roles” between men and women).

131. Dudley Clendinen, *Rev. Falwell Inspires Evangelical Vote*, N.Y. TIMES, Aug. 20, 1980, at B22.

132. See Post & Siegel, *supra* note 109, at 422–23 (explaining the new right mobilized conservative Protestants to oppose abortion by capitalize on their “entrenched fundamentalist opposition to the ERA”); Ziegler, *supra* note 47, at 583–88 (describing how the the antiabortion movement worked to isolate moderate anti-abortion advocates).

of the organization began criticizing the ERA and explaining that antiabortion advocates were "at odds with everything [pro-choice feminists] represent."¹³³

Finally, organizations like NARAL, NOW, and Planned Parenthood began contending that all abortion opponents were antifeminist, further marginalizing pro-life women. In the early 1970s, abortion-rights leaders had framed opposition to abortion primarily as an effort to impose the religious beliefs of some Americans on everyone else.¹³⁴ For example, NARAL leader Larry Lader advised his colleagues to argue that antiabortion views represented "a minority religious position" and did not "have the right to force the majority to think as they do."¹³⁵

Gradually, pro-choice organizations instead stressed the connection between the pro-life movement and the New Right. For example, at the 1974 NOW National Conference, Karen DeCrow, the organization's new President, led the delegates in voting for a resolution labeling all antiabortion activists "determined opponents of women's rights."¹³⁶ DeCrow put the point succinctly: "I don't think you can be a feminist and be against the right of a woman to choose abortion."¹³⁷

NARAL began making similar claims the same year, after Sarah Weddington, best known as one of the attorneys who had litigated *Roe*, became the organization's president.¹³⁸ As early as the spring of 1974, Weddington told the NARAL Board that "women cannot take advantage of opportunities guaranteed under ERA if they cannot control their fertility."¹³⁹ After becoming NARAL President, Weddington, like DeCrow, argued that opponents of abortion wanted to enforce traditional gender stereotypes against women.¹⁴⁰ In 1975, Weddington asserted that pro-lifers did not want to protect babies but rather intended to keep women "barefoot and pregnant."¹⁴¹

In 1978, Faye Wattleton, the new President of Planned Parenthood, began

133. *A Fighter for the Right to Life*, EBONY MAGAZINE, Apr. 1978, at 92 (quoting Dr. Jefferson, the leader of the NRLC, who explained the organization's hostility to the entire agenda pursued by pro-choice feminists). On pro-lifers' new hostility to the ERA and the broader pro-choice feminist platform, see Ziegler, *supra* note 47, at 583–88 (describing how the antiabortion movement worked to isolate moderate anti-abortion advocates). On the NRLC's opposition to the ERA, see Brown, *supra* note 107, at 1.

134. See Memorandum from Larry Lader to NARAL Board Members et al. (1972) (on file with the Schlesinger Library, Harvard University in the NARAL Papers, MC 313, Carton 8).

135. *Id.*

136. Laurie Johnston, *NOW Elects Syracuse Lawyer as Head*, N.Y. TIMES, May 28, 1974, at 29.

137. *Id.*

138. See Joan Zyda, *Abortion Rights Leader Argues for a Free Choice for Women*, CHI. TRIB., Dec. 9, 1975, at B1 (explaining how Weddington set a precedent for giving women the freedom of choice and how her organization opposed the Catholic Church's support for anti-abortion laws).

139. NARAL Executive Committee Meeting Minutes (Apr. 13, 1975) (on file with the Schlesinger Library, Harvard University in the Betty Friedan Papers, 71-62-81-M23, Carton 43, Folder 1462).

140. See Zyda, *supra* note 138, at B1.

141. See *id.*

to spread similar claims within her own organization. Like her colleagues, Wattleton suggested that the pro-life movement was more interested in oppressing women than in assisting unborn or vulnerable persons. In particular, she contended that pro-life activists were simply “[m]asquerading under the misnomer ‘Right to Life.’”¹⁴² By the fall of 1980, Wattleton had developed an attack on the antiabortion movement itself. She described opponents of abortion as “an increasingly vocal and at times violent minority which seeks to deny all of us our fundamental rights of privacy and individual decision-making.”¹⁴³ Over the course of the 1970s, women’s groups and family-planning organizations made clear that pro-life women were not welcome within their ranks. Pro-life feminists could no longer find a home in either the antiabortion movement or in mainstream pro-choice women’s organizations.

Throughout the 1970s, members of the ACCL and FFL had influenced the antiabortion movement, encouraging major organizations to refrain from opposing contraception and working with supporters of abortion rights on issues from the ERA to pregnancy disability legislation. These organizations favored abortion all the while sharing a sympathetic view of other law reforms endorsed by pro-choice feminism.

In later decades, a group of socially conservative women remade the idea of pro-life feminism. This new vision included opposition to the very reforms for which FFL and ACCL members had campaigned: among other things, government subsidized daycare and healthcare and protections against sex discrimination. As this new understanding of antiabortion feminism emerged, struggle about the meaning of true feminism intensified. Part II looks next at this step in the movement’s evolution.

II. MAMA GRIZZLIES, AUTHENTIC FEMINISTS, AND SMART GIRLS: THE PRO-LIFE FEMINIST DIVIDE

In the early 1980s, the renaissance of pro-life feminism seemed improbable. Members of antifeminist organizations, among them Concerned Women for America (CWA), became the most visible image of women in the broader pro-life movement. If Phyllis Schlafly’s STOP ERA was the leading antifeminist group of the 1970s, CWA appeared to be its equal in the 1980s.¹⁴⁴ However, CWA hardly embraced pro-life feminism. Founded in 1979 by Beverly LaHaye, CWA was designed to be an alternative to feminism and

142. Helen Epstein, *Abortion: An Issue That Won’t Go Away*, N.Y. TIMES MAG., Mar. 30, 1980, at 44.

143. *Planned Parenthood Shifting to a Patriotic Theme*, N.Y. TIMES, Oct. 5, 1980, available at <http://query.nytimes.com/mem/archive/pdf?res=FA0C11FA385410728DDDAC0894D8415B8084F1D3>.

144. Indeed, in 1986, the CWA was more than ten times larger than Schlafly’s Eagle Forum, a successor to STOP ERA. See Mary T. Schmich, *A Spokeslady of the Right*, CHI. TRIB., Mar. 23, 1986, at B1.

NOW: a group for Christian women who opposed the ERA and abortion.¹⁴⁵

Beginning at its first national convention in 1984, CWA described itself as an alternative to the women's movement, which, in turn, was framed as "among the evils besetting America."¹⁴⁶ In the mid-1980s, CWA argued that the idea of feminism had lost support because feminists had done substantial damage to the American social fabric. As LaHaye stated in 1986: "NOW's ideas are no more popular than the Susan B. Anthony dollar. . . . The feminist coin came out of circulation because nobody liked it. Well, nobody really likes their unisex, lesbian, radical philosophy either."¹⁴⁷

LaHaye also portrayed feminism as selfish and damaging to women's self-esteem. She asserted that women's priorities should be their "husband, . . . children, . . . [and] family first, and then whatever else . . . is really a secondary role."¹⁴⁸ Labeling feminists as man-haters, other CWA members argued that feminists could not love themselves, since, as one CWA member stated, "[y]ou cannot have a feeling of self-worth, if you harbor and display bitterness and hatred toward the male sex."¹⁴⁹

By the late 1980s, when it claimed a membership twice as large as that of NOW, CWA began focusing on efforts to encourage women to vote and run for public office.¹⁵⁰ In 1987, LaHaye presented political engagement as a natural extension of women's role as caretakers.¹⁵¹ CWA thus stated that women wanted to "be able to influence and to test those institutions that are going to affect [their] famil[ies]."¹⁵² Conservative female leaders, as CWA insisted, were "not feminist."¹⁵³

In the mid-1990s, as claims about post-abortion trauma syndrome began to spread and to figure in debate about partial-birth abortion,¹⁵⁴ CWA began to emphasize that the pro-life movement not only helped fetuses, but also protected the health of women.¹⁵⁵

Although the FFL did not have the same influence as did the CWA, FFL

145. On the founding of CWA, see Mary Battiata, *Beverly LaHaye and the Hymn of the Right: Leading Her Women in Support of Reagan, Bork, and SDI*, WASH. POST, Sept. 26, 1987, at C1.

146. Noel Osment, *CWA Fights for Conservative Causes*, SAN DIEGO UNION, Sept. 18, 1984, at D1.

147. Schmich, *supra* note 144, at B1.

148. *Id.*

149. Beverly LaHaye, *Why Feminism No Longer Sells*, HERITAGE FOUND. REP. (1987), available at <http://www.heritage.org/research/lecture/why-feminism-no-longer-sells>.

150. See *id.*; see also Timothy J. McNulty, *Politically Astute Women Advance from Filling Envelopes to Filling Ballots*, CHI. TRIB., Feb. 28, 1988.

151. See LaHaye, *supra* note 149.

152. *Id.*

153. *Id.*

154. See *supra* note 6 and accompanying text.

155. On the CWA's use of such arguments, see, e.g., SARA DUBOW, *OURSELVES UNBORN: A HISTORY OF THE FETUS IN MODERN AMERICA* 155 (2010). For a study of the CWA's battle against secularism in the courts, see, e.g., SARAH BARRINGER GORDON, *THE SPIRIT OF THE LAW: RELIGIOUS VOICES AND THE CONSTITUTION IN MODERN AMERICA* 133–168 (2010).

leaders also began to develop new arguments for pro-life feminism. In the 1980s and early 1990s, the FFL maintained support for the ERA while insisting that no one could reconcile abortion with a commitment to sex equality. According to the FFL, feminists should support laws that allowed women to work and raise children—like the ERA or federal laws on childcare or medical leave—while avoiding alleged “false” solutions like abortion.

Throughout the early 1980s, FFL had continued to function as a discussion group.¹⁵⁶ In 1989, when the Supreme Court decided *Webster v. Reproductive Health Services*,¹⁵⁷ the decision that had chipped the most away at *Roe v. Wade*, leaders of the organization submitted an amicus brief in the hope that FFL would “develop more influence in the antiabortion movement by attracting all those moderates on the abortion fence.”¹⁵⁸

Led by Missouri activist Rachel MacNair, FFL publicized claims similar to those made by activists in the 1970s. One group of arguments involved society’s failure to provide women alternatives to abortion or to hold men responsible for their own part in reproduction.¹⁵⁹ Another contention suggested that support for abortion violated feminist commitments to “sisterhood, unity, togetherness, [and] nurturance.”¹⁶⁰

MacNair and FFL also formulated arguments about the impact of the abortion campaign on the women’s movement, a struggle that “drained the women’s movement of power and money” that could have been used to ratify the ERA, fund public daycare, or pass the Family Medical Leave Act.¹⁶¹

Moreover, the 1989 version of FFL made more explicit a belief that women were and ought to be defined by biology.¹⁶² According to this argument, abortion was problematic because it “defiles the essence of womanhood by stripping away that which is most female, the act of childbearing.”¹⁶³ At the same time, however, the FFL continued to defend the ERA, calling for a provision explicitly banning abortion as a practice “which hurt[s] sexual equality and hurt[s], . . . cheat[s], and exploit[s] individual men and women.”¹⁶⁴

In spite of its modified arguments, FFL remained a relatively poor and

156. See Margaret Stafford, *Feminist Group Marches to Its Own Drum*, L.A. TIMES, Feb. 10, 1991.

157. 492 U.S. 490 (1989). *Webster* upheld several controversial provisions of a Missouri statute, including a preamble declaring that life began at conception, a measure prohibiting the use of public funds or facilities for abortion, and a provision requiring that before an abortion would be performed, physicians had to perform particular tests in order to ascertain fetal viability. *Id.* at 507–21.

158. See Pamela Reynolds, *A Different Voice in the Abortion Debate*, BOS. GLOBE, Aug. 11, 1989.

159. See *id.*

160. *Id.*

161. *Id.*

162. See *id.*

163. *Id.*

164. THE INCLUSIVE EQUAL RIGHTS AMENDMENT (1989) (on file with the University of Kansas, Wilcox Collection).

powerless group. In 1989, it had approximately 2,000 members and a budget of less than \$10,000.¹⁶⁵ NOW and other mainstream feminist organizations excluded pro-life women and dismissed their concerns. Annually, FFL applied for and was denied a table at the NOW National Convention.¹⁶⁶ In 1989, Patricia Ireland, the head of the organization, dismissed FFL as "another front . . . for the right to life movement."¹⁶⁷ At the same time, FFL members remained uncomfortable with the pro-life mainstream. For example, Mary Krane Derr, the leader of a Chicago-based chapter of FFL, told the *Boston Globe* that she was "repulsed" by the mainstream movement's "lack of sympathy to the plight of women seeking abortion."¹⁶⁸

In order to expand the group's base, in the early 1990s, Derr and MacNair began publicizing a different set of claims, those involving the history of antiabortion feminism. Derr edited a controversial anthology of writings by first-wave feminists and suffragettes on the subject of abortion entitled *Man's Inhumanity to Women Makes Countless Infants Die: The Early Feminist Case Against Abortion*.¹⁶⁹ MacNair explained: "The early feminists made clear that they regarded abortion as one of the greatest wrongs against women."¹⁷⁰ In roughly the same period, the organization circulated a pamphlet, entitled "Over a Century of Pro-Life Feminism," which described feminists from Elizabeth Cady Stanton to Margaret Sanger as part of a pro-life "feminist tradition of working for a society in which women can choose reproductive alternatives that are truly life-affirming for themselves and their children."¹⁷¹

By 1992, several events had created a potentially sympathetic audience for FFL's historical claims. First, in the wake of *Webster*, antiabortion activists were put on the defensive by a supposed pro-choice backlash to the decision.¹⁷² Whatever the impact of *Webster* on the pro-choice movement, politicians on both sides of the aisle perceived that discussion had changed. The victories of pro-choice gubernatorial candidates in New Jersey and Virginia were attributed

165. See Reynolds, *supra* note 158, at 4.

166. See Valerie Richardson, *Not Every Feminist Is in the Pro-Choice Camp*, WASH. TIMES, July 23, 1990, at A1.

167. *Id.*

168. See Barbara Brotman, *Feminists, But Abortion Opponents Too*, CHI. TRIB., Nov. 12, 1989, available at http://articles.chicagotribune.com/1989-11-12/news/8901300381_1_feminists-antiabortion-abortion-opponents.

169. See *Feminists for Life Reveals Suffragists' Pro-life Stand*, P.R. NEWSWIRE, Mar. 14, 1991. Of course, the historical account offered by Feminists for Life has provoked controversy. See, e.g., Allison Stevens, *Susan B. Anthony's Abortion Position Spurs Scuffle*, WOMEN'S ENEWS (Oct. 6, 2006), <http://www.womensenews.org/story/abortion/061006/susan-b-anthonys-abortion-position-spurs-scuffle>. For an analysis of the historical merit of these contentions, see generally Thomas, *supra* note 20.

170. See Thomas, *supra* note 20, at 12.

171. OVER A CENTURY OF PRO-LIFE FEMINISM (1991) (on file with the University of Kansas, Wilcox Collection).

172. See, e.g., Margaret Wolf Freivogel, *Abortion Foes March to High Court*, ST. LOUIS POST DISPATCH, Jan. 23, 1990, at 1A.

to the anti-*Webster* backlash,¹⁷³ as was the defeat of new restrictions in the Florida State Legislature. Republican leaders, including Party Chairman Lee Atwater, began to suggest that opposition to *Roe* was not a defining commitment of the GOP.¹⁷⁴ Later, even former NRLC leader Dr. John Willke and antiabortion researcher David Reardon admitted that pro-lifers needed to do more to establish that their cause had a neutral or even positive effect on women's rights.¹⁷⁵ Second, the impressive number of women elected to Congress in 1992—so many that the press dubbed the election “the Year of the Woman”—questioned how women's rights could be reconciled with opposition to abortion.¹⁷⁶

FFL stood ready with answers to those questions. As part of this effort, in 1992, MacNair announced the formation of the Susan B. Anthony List (SBAL), a political action committee designed to help women opposed to abortion to secure elected office.¹⁷⁷ MacNair made clear that the organization would seek presumably liberal candidates with “good records on women's rights—probably not Phyllis Schlafly.”¹⁷⁸

By 1998, though, in functioning independently from FFL, the SBAL endorsed a more conservative vision of antiabortion feminism. Its president, Jane Abraham, spoke in favor of restrictions on women's abortion rights, including a ban on the intact dilation-and-extraction abortion procedure (popularly known as partial-birth abortion) and a measure criminalizing the act of bringing a minor across state lines for the purpose of obtaining an abortion.¹⁷⁹ The SBAL condemned alternatives to abortion of the kind of which Marjory Mecklenburg or Rachel MacNair had approved, such as a measure presented by Congresswoman Nita Lowey that would have included contraception in the health coverage of federal employees.¹⁸⁰

The SBAL shifted to the political right for several reasons. First, as of 1994, because of the previous ties of the Republican Party to the pro-life movement, the only candidates that the SBAL was able to see elected were Republican.¹⁸¹ The 1994 election season helped the organization secure further

173. Donald Baker & Richard Harris, *Republicans to Gather for Post-Mortem in Va; Abortion Issue, Party's Tax Debt on Agenda*, WASH. POST, Dec. 1, 1989.

174. See Freivogel, *supra* note 172, at 1A. For further discussion of Republican calls for a retreat from opposition to abortion, see Baker & Harris, *supra* note 173.

175. See Reva B. Siegel, *Dignity and the Politics of Protection: Abortion Restrictions under Casey/Carhart*, 117 YALE L.J. 1694, 1715–18 (2008) (explaining Willke and Reardon's subsequent revelations about the importance of appealing to women).

176. For FFL's discussion of the issue, see Valerie Richardson, *Feminist Launches PAC for Pro-Lifers*, WASH. TIMES, Nov. 7, 1992, at A1.

177. See *id.*

178. *Id.*

179. See Juliet Elperin, *2 Lawmakers Seek to Add Nuances to Emotional Abortion Debate*, WASH. POST, June 21, 1998, at A2.

180. *Id.*

181. See Eliza Newton Carney, *That Was the Year That Wasn't*, NAT'L J., Nov. 19, 1994, at 2751 (discussing how SBAL helped get the GOP elected in 1994).

Republican dollars and supporters. When Jane Abraham and other Republican women assumed positions of leadership in the organization, the SBAL had further reason to endorse a conservative agenda (indeed, some of the SBAL's leaders, including Abraham, were married to Republican, antiabortion members of Congress).¹⁸²

By 2000, then, there were two competing strands of pro-life feminism. One, represented by FFL, at least somewhat resembled the pro-life feminism of the 1970s. Led by a new president, Serrin Foster, FFL continued sponsoring legislation that would provide "alternatives to abortion."¹⁸³ Foster and FFL continued to oppose cutbacks on welfare, favored access to or funding for contraception, and began an initiative to fund daycare and other forms of support for mothers in college.¹⁸⁴ By contrast, without offering a full account of its philosophy, the SBAL had begun to define a distinctly right-wing feminism.

A more thorough explanation of the intellectual underpinnings of conservative antiabortion feminism appeared in the early 2000s. Among the most influential figures in this effort was Harvard professor Mary Ann Glendon, who authored a leading criticism of *Roe* titled *Abortion and Divorce in Western Law: American Failures, European Challenges*.¹⁸⁵

By 2000, she had revealed that her opposition was religious and political as much as professional. She became a founding member of Women Affirming Life (WAL), a Catholic, pro-life group designed to popularize pro-woman claims.¹⁸⁶ The WAL had a distinctly legal bent; many of its members were law students, and Mary Ellen Bork, the wife of noted originalist scholar Robert Bork, was a key member.¹⁸⁷ At the 2000 WAL Conference, attendees called on Catholic pro-lifers to "define a new feminism."¹⁸⁸

In the following years, Glendon worked toward achieving this task. In a 2003 article, she distinguished second-wave feminism from authentic (and presumably antiabortion) feminism.¹⁸⁹ As Glendon put it, 1970s pro-choice feminism represented "a puzzling combination of . . . anger against men and promiscuity; man-hating and man-chasing."¹⁹⁰ Glendon asserted that "women today are looking for something more responsive to their own needs and aspirations," and she proposed that a more pro-family and pro-life feminism

182. See Wagner, *supra* note 22, at 16.

183. Ruth Rosen, *Feminists for No Choice*, S.F. CHRON., Nov. 6, 2003; see also Stephen Goode, *A Feminist Who Takes a Pro-Life Stand*, INSIGHT ON THE NEWS, Oct. 1, 2001, at 36.

184. See Goode, *supra* note 183, at 37.

185. See generally MARY ANN GLENDON, *ABORTION AND DIVORCE IN WESTERN LAW: AMERICAN FAILURES, EUROPEAN CHALLENGES* (1987).

186. See Kathleen Sweeney, *The Female Genius and the Culture of Life*, NAT'L RIGHT TO LIFE NEWS, Apr. 1, 2000, available at www.nrlc.org/news/2000/NRL04/sween.html.

187. See *id.*

188. *Id.*

189. Mary Ann Glendon, *The Women of Roe v. Wade*, FIRST THINGS 1, 6 (2003).

190. *Id.* at 5.

would serve that purpose.¹⁹¹

Glendon reiterated these arguments in a major 2005 pro-life feminist anthology, *The Cost of "Choice": Women Evaluate the Impact of Abortion*. There, she stressed that the definition of feminism propounded by second-wave feminists was unsatisfying and incorrect.¹⁹² As did other pro-life feminists like Elizabeth Fox-Genovese, Glendon argued that socially conservative women were truer to the spirit of a woman's movement than were the feminist advocates active in the 1970s.¹⁹³ Glendon's work marked a turning point in pro-life feminism. Instead of claiming to offer a more convincing interpretation of progressive feminism, Glendon defined and defended an alternative to it.

It was in 2008 that socially conservative pro-life feminist ideology took center stage in American politics, as Sarah Palin, then-Governor of Alaska, became the Republican candidate for the vice presidency of the United States.¹⁹⁴ Palin first described herself as a feminist in a 2008 interview with CBS news anchor Katie Couric, stating that she was "a feminist who believes in equal rights" and asserting her belief that "women today [. . .] have every opportunity that a man has to succeed and to try to have it all."¹⁹⁵ Throughout the election season, Palin offered few additional details about her definition of feminism. In another interview, this time with the Fox News Network, Palin mentioned only that she "subscribed to Feminists for Life," and she suggested that the organization represented her and her beliefs.¹⁹⁶ The 2008 presidential election gave Palin a forum to discuss the issue of pro-life feminism, and partly for this reason, the movement received unprecedented political attention. However, by the end of the 2008 election season, she had done little to clarify the meaning of pro-life feminism.

Eventually, Palin gave a somewhat clearer sense of her understanding of pro-life feminism in her 2009 book, *Going Rogue: An American Life*.¹⁹⁷ Palin endorsed "reasoned arguments for equal opportunity," and she applauded past feminists who had "fought battles for things like equal pay and equal access."¹⁹⁸ However, in 2008, Palin spoke out against the Lily Ledbetter Pay Equity Act, a recent equal-pay law.¹⁹⁹

191. *Id.*

192. See Mary Ann Glendon, *From Culture Wars to Building a Culture of Life*, in *THE COST OF CHOICE: WOMEN EVALUATE THE IMPACT OF ABORTION* (Erica Bachiochi ed., 2004).

193. See *id.*; see also Elizabeth Fox-Genovese, *Abortion: A War on Women*, in *THE COST OF CHOICE: WOMEN EVALUATE THE IMPACT OF ABORTION*, *supra* note 192, at 50–63.

194. See, e.g., Michael Abramowitz, *McCain Tries to Push Past Palin Backlash*, WASH. POST, Oct. 23, 2008, at A3 (commenting on the public reception of Palin's selection as a vice presidential candidate).

195. *Behind the Scenes with Sarah Palin*, C.B.S. NEWS TRANSCRIPTS, Sept. 30, 2008.

196. *On the Record with Greta Van Susteren*, FOX NEWS NETWORK TRANSCRIPTS, Nov. 10, 2008.

197. See SARAH PALIN, *GOING ROGUE: AN AMERICAN LIFE* (2009).

198. *Id.* at 29.

199. See, e.g., Emily Douglas, *Palin on Lily Ledbetter Pay Act: A Boon for Trial Lawyers* (Oct. 1, 2008), available at <http://www.rhrealitycheck.org/blog/2008/10/01/palin-lily-ledbetter-pay-act-a-boon-trial-lawyers>.

The Lily Ledbetter Act came in the wake of the Supreme Court's 2006 opinion in *Ledbetter v. Goodyear Tire Co.*²⁰⁰ The Court had barred Ledbetter's otherwise valid pay-discrimination claim because she had filed her claim more than 180 days after receiving her first discriminatory paycheck.²⁰¹ While insisting that she endorsed the idea of equal pay, Palin framed the Lily Ledbetter Act as being politically unnecessary:

The Ledbetter pay act - it was gonna turn into a boon for trial lawyers who, I believe, could have taken advantage of women who . . . would allege some kind of discrimination. Thankfully, there are laws on the books, there have been since 1963, that no woman could be discriminated against in the workplace in terms of anything, but especially in terms of pay. So, thankfully we have the laws on the books and they better be enforced.²⁰²

In Palin's account, women already enjoyed all the legal protection they required. The same was true of sex discrimination law more broadly. Palin explained: "we consider ourselves more liberated than most women's rights groups would have us believe we are."²⁰³

The book tour for *Going Rogue* reestablished Palin's star power, as did her efforts to groom other pro-life female candidates for the 2010 midterm elections.²⁰⁴ Her celebrity helped her to publicize a particular understanding of pro-life feminism. For example, at a May 2010 speech before the SBAL, Palin described pro-life feminism as a law-reform movement that grew from and was shaped by women's natural role as mothers and caregivers.²⁰⁵ She described pro-life feminists as "mama grizzlies," women who became active in politics and in feminism in order to defend their children.²⁰⁶ As importantly, she defined a broad conservative set of legal goals—including fiscal ones—as part of antiabortion feminism: "I think a whole lot of moms are concerned about government handing our kids the bill . . . [We] rise up and moms say, 'that's enough.'"²⁰⁷

She further suggested that, contrary to the claims of left-wing feminists, abortion did not further sex equality. Without the availability of abortion, women could "give their child life in addition to pursuing career[s] and pursuing education."²⁰⁸ Since women and men were already equal, women could "have it

200. 550 U.S. 618 (2007).

201. *Id.* at 628–34.

202. Douglas, *supra* note 199.

203. PALIN, *supra* note 197, at 30.

204. See, e.g., Linda Feldman, *Sarah Palin: Feminist First, Tea Partyer Second*, CHRISTIAN SCI. MONITOR, May 14, 2010.

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

all.”²⁰⁹ SBAL leader Marjorie Dannenfelser echoed Palin’s account of pro-life feminism and the purpose of the SBAL’s activities: in speaking of Palin’s speech, she stated, “This whole event is about the bond between mother and child.”²¹⁰

Palin’s message resonated with a previously underrepresented group of antiabortion women. Since the late 1990s, existing conservative groups like the CWA had struggled to reach younger women.²¹¹ Indeed, in the decade, the organization was reported to have lost 200,000 members.²¹² When Beverly LaHaye stepped down as President of the organization, her replacement, Carmen Pate, was meant to be a woman with whom younger, more worldly women could relate (Pate had been divorced and even admitted to having had casual romantic relationships before adopting a more traditional lifestyle).²¹³

Like Palin, Pate’s life story spoke to a younger generation of pro-life women. In a 2004 survey in *Christianity Today*, more than half of evangelical Protestants did not hold divorce to be a sin.²¹⁴ Other studies, in particular one by the Barna group, indicated that the rate of divorce among religious conservatives was as high as or higher than in the general population.²¹⁵

Similarly, as early as the 1990s, a majority of evangelical women reported that they were working outside the home. In a survey of major new charismatic churches, 75 percent of those polled disagreed with the statement that “women should take care of the home and leave running the country to men.”²¹⁶

In roughly the same period, women were becoming more politically active in right-wing politics. As of 2010, 55 percent of the Tea Party membership was female, and many echoed the version of antiabortion feminism that Palin articulated.²¹⁷ Conservative columnist Kathryn Jean Lopez defined a pro-life feminist reformer as “[a] woman who is pro-life and pro-marriage and embraces that which makes her different from a man while loving a man for all he is.”²¹⁸ Between 2009 and 2010, new organizations formed to promote this vision, including As A Mom, American Mothers, and Homemakers for America.²¹⁹

209. *Id.*

210. *Id.*

211. See, e.g., *20 Year Old CWA Struggles to Find, Retain New Leader*, WASH. TIMES, Sep. 12, 1999, at C1.

212. See *id.*

213. See, e.g., *LaHaye Steps Down as CWA President*, WASH. TIMES, Feb. 2, 1998, at A4.

214. Tim Safford, *Can This Institution Be Saved?* CHRISTIANITY TODAY (Nov. 2004), available at <http://www.christianitytoday.com/ct/2004/november/26.52.html>.

215. See *Born-Again Christians Are Just As Likely to Divorce As Non-Christians*, BARN UPDATE (Sep. 8, 2004), <http://www.barna.org/FlxPage.aspx?PageCMD>.

216. ANDREA SMITH, *NATIVE AMERICANS AND THE CHRISTIAN RIGHT: THE GENDERED POLITICS OF UNLIKELY ALLIANCES* 192 (2008).

217. See Sophie Elmhurst, *The Mom Supremacy*, NEW STATESMEN, Oct. 4, 2010; Colleen Campbell, *The Palin Effect*, ST. LOUIS POST DISPATCH, June 17, 2010, at A15.

218. See Kathryn Jean Lopez, *If Mama Aint’t Happy, She Might Just Run . . . For Office*, NAT’L REV. ONLINE, June 14, 2010.

219. See Elmhurst, *supra* note 217, at A15. Randy Barnett similarly notes, “Women dominate the Tea Party leadership and gatherings.” Randy Barnett, *The Constitution, the Tea Party, and*

Beginning in 2009, Republicans in Congress began adopting an antiabortion, woman-protective argument by alleging that abortion providers and parents chose to abort girls for discriminatory reasons. In 2009, Rep. Trent Franks (R-AZ) argued: “what good are the hard-won liberties of voting and other women’s rights if babies may still be aborted simply for being girls?”²²⁰ In 2012, Rep. Ann Marie Buerkle (R-NY) similarly contended: “There can be no rights for women if we don’t allow them the right to live.”²²¹ Legislators in states like Arizona and North Dakota similarly asserted that parents chose to abort female fetuses and thereby “reinforce[d] sex discrimination.”²²² The 2012 Republican Party platform demanded protection for female unborn children against “gender discrimination in its most lethal form.”²²³ In the political arena, conservative pro-lifers made woman-protective arguments describing women as the targets of sex-selective abortion. In the courts, abortion opponents similarly suggested that the state could properly protect women from the regret they would suffer after choosing abortion.²²⁴ Most prominently, in *Carhart*, the Supreme Court described as legitimate Congress’s interest in preventing women’s regret of “their choice to abort the infant life they once created and sustained.”²²⁵

By contrast, left-leaning pro-life feminists still echo arguments made by the ACCL and FFL in the 1970s. One such group, Consistent Life, celebrated its twenty-fifth anniversary in March 2012.²²⁶ Consistent Life, which serves as an umbrella organization for 200 smaller groups, includes among its leaders veteran pro-life feminists like Rachel MacNair.²²⁷ It describes itself as “committed to the protection of life, which is threatened in today’s world by war, abortion, poverty, racism, capital punishment, and euthanasia.”²²⁸ Consistent Life promotes this

the Repeal Amendment, 105 NW. U. L. REV. COL. 281, 281 (2009).

220. Trent Franks, *A 21-st Century Civil-Rights Battle*, WASH. TIMES, Apr. 20, 2009, at A23.

221. Ian Duncan, *Republican Effort to Ban Abortions Based on Gender Fails in House*, L.A. TIMES (May 31, 2012), available at <http://articles.latimes.com/2012/may/31/news/la-pn-republican-effort-to-ban-abortions-based-on-gender-fails-in-house-20120531>.

222. See Caitlin Coakley Beckner, *Planned Parenthood Reeling as Flood of New Abortion Restrictions Set to Become Law*, ARIZ. CAP. TIMES (Aug. 29, 2011) (discussing the campaign for sex-selective abortion laws in Arizona), available at <http://azcapitoltimes.com/news/2011/08/29/planned-parenthood-reeling-as-flood-of-new-abortion-restrictions-set-to-become-law/>; Nick Smith, *Abortion Bills Passed*, BISMARCK TRIB. (Mar. 15, 2013) (discussing battle for such laws in North Dakota) available at http://bismarcktribune.com/news/local/govt-and-politics/abortion-bills-passed/article_e6a91f40-8dee-11e2-8e19-001a4bcf887a.html.

223. 2012 Republican Platform, GOP, http://www.gop.com/2012-republican-platform_Wc/#Item14 (last visited Mar. 1, 2013).

224. See, e.g., *infra* note 223 and accompanying text.

225. *Gonzales v. Carhart*, 550 U.S. 124, 159 (2007); see also *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570, 576–77 (5th Cir. 2012) (quoting with approval *Carhart*’s language concerning post-abortion regret); *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 734–35 (8th Cir. 2008) (same).

226. On the twenty-fifth anniversary conference, see Consistent Life Twenty-Fifth Anniversary Conference, CONSISTENT LIFE (Mar. 2012), <http://cl25conf.wordpress.com/conference-talks-presentations/>.

227. For an example of MacNair’s participation in the organization, see *id.*

228. See *Mission Statement*, CONSISTENT LIFE, <http://www.consistent-life.org/> (last visited Mar.

agenda through its publications and pamphlets, such as *Consistently Opposing Killing: From Abortion to Assisted Suicide, the Death Penalty, and War*.²²⁹

The organization is nonpartisan and describes itself as open to anyone who shares any of its positions on non-violence.²³⁰ Its official literature includes claims reminiscent of Pat Goltz's arguments about sexual exploitation in the 1970s. For example, in a pamphlet entitled *Failed Experiment: Abortion, Women's Rights, Poverty, and Racism*, Consistent Life argues:

It was predicted that [when abortion was legal] women would have expanded choices in their lives. What do we say to the man who says, "If my girlfriend is stupid enough to get pregnant, she's going to the abortion clinic this afternoon"? Did we really think that attitudes of that kind would not be common among men of a sexually exploitative mindset? . . . There are times when ready access to abortion actually *reduces* a woman's choices, as support to which she's entitled is withdrawn because of it.²³¹

Similarly, All Our Lives, a group founded in 2010 by Mary Krane Derr and Jen Roth, promotes rights for the gay and lesbian community, rights to contraception, universal healthcare, and family leave.²³² Serving as a clearinghouse for information and action alerts, All Our Lives, like Consistent Life, seeks to build coalitions with progressive organizations that share some of its substantive positions. As the organization asserts: "Most pro-choicers are not pro-abortion; like us, they would much prefer prevention of unplanned pregnancy and support for pregnant women so that no woman feels that abortion is her only choice. We are much more likely to achieve those goals if we work together."²³³

Activists inside and outside the pro-life movement contest the meaning of pro-life feminism. Consider the controversy surrounding a recent piece posted on *Politico* by pro-life activist Lila Rose.²³⁴ In April 2012, Rose wrote what she called a manifesto for pro-life feminists. In so doing, she offered a strongly

1, 2013).

229. See generally *CONSISTENTLY OPPOSING KILLING: FROM ABORTION TO ASSISTED SUICIDE, THE DEATH PENALTY, AND WAR* (Rachel MacNair et al. eds., 2011).

230. See *CONSISTENT LIFE, BUILDING A NEW WORLD*, available at <http://www.consistent-life.org/bldgnewworldflier.pdf> (last visited Apr. 2, 2013) (explaining that the organization is nonpartisan and describing the organization's willingness to accept members who share some of the group's positions).

231. *The Failed Experiment: Abortion, Women's Rights, Poverty, and Racism*, CONSISTENT LIFE, <http://www.consistent-life.org/failedexperiment.pdf> (last visited Mar. 3, 2013).

232. On the founding of All Our Lives, see *Who Is Behind All Our Lives?*, ALL OUR LIVES (May 13, 2012), <http://www.allourlives.org/faq/who-is-behind-all-our-lives>. For an explanation of the organization's positions, see *A Primer on Pro-Life Progressivism*, ALL OUR LIVES, <http://www.allourlives.org/a-primer-on-pro-life-progressivism/> (last visited Mar. 1, 2013) [hereinafter *Primer*].

233. See *Primer*, *supra* note 232.

234. Lila Rose, *Battle Hymn of a Pro-Life Feminist*, POLITICO (Apr. 2, 2012, 9:33 PM), <http://www.politico.com/news/stories/0412/74739.html>.

conservative, traditionalist vision of pro-life feminism, one that spoke for women “for whom the idea of artificial birth control [is] insulting,” and for women who believe “that something precious is lost when fertility is intentionally excluded from marriage.”²³⁵

Rose’s comments provoked considerable controversy. On the feminist blog *Jezebel*, Erin Gloria Ryan questioned whether Rose could be rightly identified as any kind of feminist. Ryan described Rose’s views as being the “opposite of pro-woman advocacy.”²³⁶ All Our Lives also took issue with Rose’s comments, suggesting that she had mischaracterized pro-life feminism: “Lila Rose’s ideal, contraceptive-free world would not be a paradise of gender equality. It would be place where women’s sovereignty over *their own* bodies was even more fragile and imperiled than it is now. . . . Is it any wonder then that we assert a very different vision of pro-life feminism . . . ?”²³⁷

The controversy over Rose’s comments raised several fundamental questions about the nature of feminism. One such question attracted attention when Sarah Palin first defined herself as a feminist: can pro-life women be feminists, and who decides what constitutes true feminism? A second question became clear in the dispute between Rose and All Our Lives: who speaks for antiabortion feminism, and what beliefs, policies, and arguments ought to define it? There are no easy answers to these questions, but as Part III argues, the answer to them will have an important impact on the abortion debate.

III. PRO-LIFE FEMINISM IN CONTEXT

A good deal is at stake in understanding the roots and stakes of contemporary pro-life feminism. First, when we view socially conservative antiabortion feminism in its historical context, some of the tensions inherent in it become apparent. Antiabortion feminists often rely heavily on the kind of paternalistic, woman-protective argument highlighted in *Carhart*—an argument that the law should restrict women’s abortion rights in order to protect women from post-abortion regret.²³⁸ At the same time, however, these advocates reject any efforts to present women as victims or subordinates in need of help. If women are already equal to men and in no need of legislative or judicial assistance, why should women be protected from their own poor decisions? In the future, those on either side of the abortion question will have to address, exploit, or resolve this tension.

The history considered here also points to several potential areas of conflict

235. *See id.*

236. Erin Gloria Ryan, *Anti-Abortion Feminist Is Absolutely Terrified of Sluts*, JEZEBEL (Apr. 3, 2012, 11:40 AM), <http://jezebel.com/5898662/anti-abortion-feminist-is-absolutely-terrified-of-sluts>.

237. All Our Lives, *Why Lila Rose Doesn’t Even Speak for Pro-Life Feminists*, FEM2PT0 (Apr. 16, 2012), <http://www.fem2pt0.com/2012/04/16/why-lila-rose-doesnt-speak-for-pro-life-feminists/>.

238. *See* DUBOW, *supra* note 155, at 155–60.

within antiabortion feminism. One particularly salient area involves the proposed defunding of Planned Parenthood clinics, as well as the availability of contraception and sex education.²³⁹ Although current members of the organization hold differing views on birth control, members of FFL have generally supported access to contraception or sex education as one alternative to abortion.²⁴⁰ Organizations such as All Our Lives view contraception as a right and campaign for better access to it.²⁴¹ By contrast, some conservative activists argue that contraception either terminates pregnancies or is as morally objectionable as abortion.²⁴²

Another potential conflict involves the contours of current pregnancy discrimination legislation. As we have seen, women in groups like FFL have long supported measures like the PDA, as well as local- or college-based efforts to support pregnant women and new mothers. Activists like Palin generally oppose antidiscrimination laws, arguing that such reforms frame women as victims in need of government support.²⁴³

Finally, antiabortion feminists remain divided on the desirability of health-care or welfare legislation. Traditionally, FFL has sided with groups like NOW in lobbying for the expansion or maintenance of entitlement programs, a position maintained by All Our Lives.²⁴⁴ Some members of the new generation instead present the demand for a balanced budget or a more limited government as a defining commitment of true feminism.²⁴⁵

As these conflicts demonstrate, supporters of abortion rights may be able to find common ground with some activists who identify as pro-life. Organizations like All Our Lives agree with abortion-rights supporters on issues like domestic-violence protections and government-funded contraception.²⁴⁶ By neglecting the diversity of antiabortion feminists, supporters of reproductive rights may miss out on important opportunities to work together or to identify reforms that would make abortion less necessary—a goal major abortion-rights groups have long endorsed.²⁴⁷

239. On the battle surrounding funding for Planned Parenthood and other abortion providers, see *Planned Parenthood Battle Signals Fresh Twist in Abortion Wars*, CHRISTIAN SCI. MONITOR, June 9, 2011; *Planned Parenthood Under Fire*, U.S.A. TODAY, May 26, 2011, at 3A.

240. More recently, FFL has been more equivocal about its position on contraception. See *Women's Group Advocates for Abortion Alternatives*, NAT'L PUB. RADIO, Jan. 22, 2010.

241. See *Primer*, *supra* note 232; *Mission*, ALL OUR LIVES, *supra* note 18.

242. See, e.g., *Birth Control*, AM. LIFE LEAGUE <http://www.all.org/nav/index/heading/OQ/cat/Mzc/> (last visited Mar. 1, 2013); see also Rose, *supra* note 234.

243. See, e.g., PALIN, *supra* note 197, at 29.

244. See, e.g., Melissa Healy, *Feminists for Life Keys on Prevention, Not Abortion*, L.A. TIMES, Jan. 21, 1997, at A5; see also *Primer*, *supra* note 232.

245. See, e.g., Feldman, *supra* note 204.

246. See *Take Action for VAWA Today*, ALL OUR LIVES (Nov. 14, 2012), <http://www.allourlives.org/take-action-for-va-wa-today>.

247. For articulations of this goal by abortion-rights movement, see Debra Rosenberg, *A New Ambivalence*, NEWSWEEK, Oct. 8, 2007, available at 2007 WLNR 19290680 (setting out the

Scholars who seek to better understand or shape the abortion debate would also benefit from a deeper understanding of pro-life feminism, for the movement is likely to play an increasingly important role in discussions about abortion. Justice Ginsburg's dissent in *Carhart* made immediate and real the possibility that the Supreme Court would link abortion rights to women's equal citizenship and to the Equal Protection Clause of the Fourteenth Amendment.²⁴⁸ For pro-life activists, it became necessary to develop a counterargument to what one abortion opponent called "a more absolutist equal protection rationale for the abortion right."²⁴⁹ To some, pro-life feminist claims represent a relatively non-paternalistic, seemingly pro-woman, and potentially effective counterargument.

The influence of conservative pro-life feminist reasoning is already evident in current legislative struggles. Since 2011, states such as Texas, Kansas, Indiana, and Wisconsin have passed laws denying Medicaid or Title X funding to organizations that also provide abortion services.²⁵⁰ Since the passage of the Hyde Amendment in 1976 and the introduction of federal law banning the use of Title X monies for abortion, providers cannot use either Title X or Medicaid funds to pay for abortion services.²⁵¹ The new defunding laws, by contrast, deny Medicaid or Title X funds to organizations that provide or advocate for abortion even when the funds would exclusively cover non-abortion services, such as contraception or STI testing.²⁵² In 2011, by a vote of 240-185, the U.S. House of Representatives passed an amendment to a government funding bill that would have defunded Planned Parenthood; in the House, ten Democrats voted for the amendment before it was subsequently defeated in the Senate.²⁵³

In campaigning for defunding laws, Lila Rose's Live Action and the SBAL alleged that Planned Parenthood discriminated against women by performing sex-selective abortions and by facilitating the sexual exploitation of minors.²⁵⁴ In

organization's "common-sense goal of making abortion less necessary"); Kim Mills, *And Prevention*, PITTSBURGH POST-GAZETTE, Jan. 8, 1994, at A3 (Kate Michelman of NARAL explaining: "We intend to lead the way in making abortion less necessary . . ."); Maralee Schwartz and Dan Balz, *Abortion Rights Group Marks Webster Decision*, WASH. POST, July 3, 1991.

248. For examples of commentators expressing this opinion, see Sunstein, *supra* note 16, at A31; see also Bopp, *supra* note 16.

249. See Bopp, *supra* note 16. For other examples of antiabortion efforts to rebut equal protection arguments for abortion rights, see Erika Bachiochi, *Embodied Equality: Debunking Equal Protection Arguments for Abortion Rights*, 34 HARV. J.L. & PUB. POL'Y 889 (2011).

250. See, e.g., Ziegler, *supra* note 11, at 727-28.

251. Title X, enacted in 1970, provides that "[n]one of the funds appropriated under this subchapter shall be used in programs where abortion is a method of family planning." 42 U.S.C. § 300a-6 (2006). For its part, the Hyde Amendment, originally passed in 1976, prohibits the use of Medicaid funds for abortion. See 42 U.S.C. § 1396 (2006).

252. See, e.g., 2011 N.C. SESS. LAWS 2011-145 § 10.19; 2011 TEX. GEN. LAWS §§ 300, 335, 4025, 4020; 1 TEX. ADMIN. CODE § 354.1363(a) (2013); ARIZ. REV. STAT. ANN. § 35-196.05 (2013).

253. Final Vote Results For Roll Call 93 on the Pence Amendment (Feb. 17, 2011), available at <http://clerk.house.gov/evs/2011/roll093.xml>.

254. On Live Action's arguments about sex-selective abortion, see Live Action, *Sex Selective Abortion Today Thrives in America, Courtesy of Planned Parenthood*, LIVE ACTION BLOG

one video disseminated by Live Action, the woman seeking an abortion was a juvenile dating a man almost a decade older than she.²⁵⁵ Other videos also presented Planned Parenthood workers seemingly oblivious to the vulnerability of juvenile patients²⁵⁶ or underage sex workers accompanied by a pimp.²⁵⁷ The videos portrayed Planned Parenthood workers as being indifferent to applicable laws on the reporting of child abuse or on parental consent in the context of abortion.²⁵⁸ These videos reinforce conservative pro-life feminist arguments that abortion providers care more about money than about women's rights.

Conservative pro-life feminists have also influenced the campaign for bans on sex-selective abortion. Four states already enforce such bans, and Representative Trent Franks has proposed a similar measure at the federal level.²⁵⁹ The federal Prenatal Discrimination Act (PRENDA) would criminalize the act of performing, soliciting, accepting funds to perform, or coercing a woman to undergo an abortion based on the sex or gender of the child.²⁶⁰ Significantly, PRENDA would also create a reporting requirement for any "physician, physician's assistant, nurse, counselor, or other medical or mental health professional" who is aware of "known or suspected violations" of the statute to law enforcement.²⁶¹

Sex-selective abortion laws require abortion providers to interrogate women about their reasons for choosing an abortion, making what is, for many, an already stressful experience more traumatic. PRENDA would go further, allowing any healthcare worker to report and potentially interfere with "suspect" decisions and giving virtually no guidance as to what would constitute such a suspicion or make it reasonable.²⁶² As pro-choice activists have argued, the scrutiny and reporting required by PRENDA would likely have a significant chilling effect on abortion rights.²⁶³

In calling for bans on sex-selective abortion, conservative pro-life feminists have accused abortion providers of discriminating against women, since they

(May 29, 2012), <http://liveaction.org/blog/sex-selective-abortion-thrives-in-america-courtesy-planned-parenthood/>. For discussion of the organization's accusations about Planned Parenthood's treatment of juveniles, see *infra* notes 255-58 and text accompanying.

255. Lila Rose, *Fighting for Life*, FIRST THINGS, Oct. 1, 2010, at 14.

256. See, e.g., Sandhya Somashekhar, *Anti-Abortion Group Releases Planned Parenthood Sting Video*, WASH. POST, Feb. 2, 2011, at A4; Charles Wilson, *Clinic Videos Spark Probe*, J. GAZETTE, Dec. 19, 2008, at 4C.

257. See, e.g., Josh Brown, *'Pimp' Video Stings Planned Parenthood*, WASH. TIMES, Feb. 1, 2011, at A5.

258. See Ziegler, *supra* note 11, at 721-22.

259. See Feran, *supra* note 8.

260. The Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act of 2011, H.R. 3541, 112th Cong. §3 (2011) (as introduced in House, Dec. 1, 2011), available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3541ih/pdf/BILLS-112hr3541ih.pdf>.

261. *Id.*

262. See *id.*

263. See, e.g., Rep. Judy Chu, *PRENDA: A Wolf in Sheep's Clothing*, HUFFINGTON POST (Feb. 8, 2012), available at http://www.huffingtonpost.com/rep-judy-chu/prenda-a-wolf-in-sheeps-c_b_1262806.html.

assume that most sex-selective abortions in the United States target female fetuses.²⁶⁴ When PRENDA was defeated, Marjorie Dannenfelser of the SBAL promised that, in the upcoming election, “women [would] remember who failed to stand up for them.”²⁶⁵ Similar arguments have spread in the campaign against sex-selective abortion. Representative Franks called sex-selective abortion the “ultimate violence against women.”²⁶⁶ Republicans in Congress described sex-selective abortion, not as efforts to chip away at abortion rights, but as being the true “war on women.”²⁶⁷

As the sex-selection and defunding campaigns illustrate, pro-lifers have tried to appropriate claims about sex discrimination, and use them to deny women reproductive choice. In tying abortion access to teen prostitution, conservative pro-life feminists play on fears about the sexual exploitation of women.²⁶⁸ In a society in which men and women are not equal, as Catharine MacKinnon has contended, access to abortion can be seen as reinforcing the sexual and social subordination of women.²⁶⁹

Conservative pro-life feminists weave these fears into a narrative that portrays abortion providers as willing to facilitate the sexual subordination of women. Similarly, allegations about sex-selective abortion describe abortion providers as money-hungry mercenaries, willing to perform any kind of abortion for a price. The powerful political stories crafted by conservative pro-life feminists twist abortion-rights arguments about facilitating private choice. As groups like Live Action and the SBAL have suggested, some of the private choices facilitated by providers harm, exploit, or kill women. In practice, as pro-choice activists have argued, defunding or sex-selection laws seem unlikely to fix whatever social harm might be at issue, if there is any harm at all.²⁷⁰ In

264. See, e.g., Smith, *supra* note 222, at B1 (a North Dakota state legislator explaining that “[s]ex selective abortion is an abortion performed for the purpose of eliminating an unborn child of an undesired sex—usually female”); see also Jonathan Strong, *War for Women Takes House*, ROLL CALL, May 31, 2012, 2012 WLNR 11435408.

265. Cheryl Wetzstein, *Bill to Ban Abortion for Sex Selection Abortion Defeated*, WASH. TIMES, June 1, 2012, at A3.

266. *Id.*

267. Jim Abrams, *New Abortion Ban Falls Short in House*, CHI. TRIB., June 1, 2012, at 15. For further conservative pro-life claims about a war on women, see, e.g., Jonathan Last, *The War Against Girls*, WALL ST. J., June 24, 2011; Lila Rose, *Sex-Selective Abortion is True War on Women*, ROLL CALL, June 25, 2012; *Who's Really Waging the War against Women?*, DETROIT FREE PRESS, June 17, 2012, at A22.

268. See Ziegler, *supra* note 11, at 722.

269. See CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 99 (1987) (“[U]nder conditions of gender inequality, sexual liberation . . . does not free women; it frees male sexual aggression.”); Katherine M. Franke, *Theorizing Yes: An Essay on Feminism, Law, and Desire*, 101 COLUM. L. REV. 181, 200 (2001) (“[S]ome legal feminists have framed the abortion issue as one that fundamentally involves enabling *men's* sexual pleasure on the one hand, and women's exploitation on the other.”) (emphasis added).

270. On the poor fit between sex-selection bans and the goal of banning sex-selection abortion, see Sneha Barot, *A Problem-and-Solution Mismatch: Son Preference and Sex-Selective Abortion Bans*, 15 GUTTMACHER POL. REV., no. 2 (2012). On concerns about the accuracy of Live Action's allegations, see Michelle Goldberg, *Lila Rose: The Woman Who Sparked the Planned Parenthood Flap*, NEWSWEEK, Feb. 6, 2012.

theory, however, no one is likely to champion the exploitation of minors or the use of sex-selective abortion.

The vision of feminism championed by the conservatives in Live Action or the SBAL, however, is not representative of the beliefs held by all activists who identify as pro-life feminists. The recent history of antiabortion feminism provides a considerably more complex picture than is often offered by those involved in the debate. There have been and likely will be more than one understanding of pro-life feminism, and the cause, identity, and goals of the movement will continue to be contested. Understanding the nature of these conflicts is an important part of making sense of the abortion debate.

CONCLUSION

Since the 2010 midterm elections, pro-life, socially conservative, self-proclaimed feminists have sparked considerable controversy. These women reformers represent an important new breed of conservative: while Phyllis Schlafly and activists of her generation condemned feminism, contemporary activists claim to be the saviors and true representatives of feminism. Those who identify as pro-life feminists have sometimes radically different visions of what it means to be pro-life or even feminist. What are the legal and political goals of the pro-life feminist law reform movements? How will disputes within pro-life feminism be resolved?

The history of contemporary pro-life feminism makes apparent the importance of these questions and offers some insight into how we might answer them. Contemporary antiabortion feminism has a complex history, for members of the movement have adopted different legal goals and political identities. As such, the future of pro-life feminism will be unpredictable. So, too, will its impact on the abortion debate. One thing will be nearly certain: whatever the future of the abortion debate, the evolution of pro-life feminism will impact it considerably.