

Hyde Amendment: The opening wedge to abolish abortion

Advocates on both sides of the abortion issue have made sure that the anniversary of Roe v. Wade on January 22 is highly visible. Supporters and opponents use the date to rally their forces. In contrast, September 30, the date in 1976 that federal Medicaid funding for abortion was banned by the Hyde Amendment, has not gained the same attention.

In 2006, as we mark the 30th anniversary of the passage of the Hyde Amendment, NNAF is determined to change this situation by launching a new campaign that will focus on state and federal policies restricting abortion funding and access. We call on all member funds and sister organizations to join us in this effort. This article focuses on the history of the Hyde Amendment and its impact on women.

Political Context

Before Roe v. Wade, opponents of abortion had worked at the state level to defeat efforts to legalize abortion. But after the 1973 decision they were galvanized to create a major political movement. The Catholic Church took the lead through the National Conference of Catholic Bishops, which set up an independent lobbying group with the goal of overturning Roe. Other key players included the National Right to Life Committee, which united state anti-abortion groups, and the Christian Evangelicals, who had formerly resisted political engagement. While securing a constitutional amendment banning abortion was abortion opponents' ultimate goal, they realized they did not have sufficient support. They turned instead to tirelessly pursuing a strategy of advocating for restrictions on the state level. In 1973 abortion opponents introduced close to 200 bills in state legislatures; 62 of those 200 measures limiting access to abortion passed.[1]

The Catholic Church stepped up its activities against Roe in 1975, when the Bishops issued a Pastoral Plan for Pro-Life Activities, which called for all Catholic organizations to take up a "pro-life legislative plan." The Plan laid out a dual-strategy that has essentially been followed by the anti-abortion movement ever since: work toward outlawing abortion entirely by pursuing direct efforts such as a Human Life Amendment[2] while simultaneously pushing for laws and administrative policies that restrict abortion and build support for criminalization.

The New Right, which was also gathering force at this time, saw the opportunity to expand its ranks by joining traditional conservative constituencies with the growing anti-abortion movement. Opposition to abortion became the centerpiece of a broad "pro-traditional patriarchal family, anti-big government and anti-welfare" agenda. Attacking Medicaid payments for abortion was a perfect way to bring the two groups together concretely. Eliminating government funding appealed both to those who opposed abortion and those who opposed taxes and the welfare state.

Congress Passes the Hyde Amendment

In 1976, representative Henry Hyde (R-IL) proposed attaching a provision to the appropriations bill for the Departments of Labor, Health, Education and Welfare (HEW, now called the Department of Health and Human Services, HHS) that would end Medicaid funding for abortion. This became known as the Hyde Amendment. On September 30, 1976, the Amendment passed the House 207-167 with no exceptions for health or life endangerment,[3] even though a similar but weaker measure had been voted down two years earlier. The Senate initially rejected the Amendment but eventually voted for a compromise bill that contained an exception "...where the life of the mother would be clearly endangered if the fetus were carried to term." [4]

Passing the Hyde Amendment was the first big victory for the anti-abortion movement and evidence of its growing political clout. It was also a clear example of the anti-abortion two-pronged strategy of pushing for restrictions on abortion in the short-term while pursuing a full ban in the long-term. In response to the challenge that the Amendment was a vote against poor people, Rep. Hyde said during the floor debate, "I would certainly like to prevent, if I could legally, anybody having an abortion, a rich woman, a middle class woman, or a poor woman. Unfortunately, the only vehicle available is the HEW Medicaid bill. A life is a life." [5]

The day after the Hyde Amendment passed, abortion rights advocates challenged it in court. [6] Federal District court Judge John F. Dooling issued a temporary restraining order and a preliminary injunction barring enforcement of the funding ban, and later ruled that it was unconstitutional. While abortion opponents appealed his decision to the U.S. Supreme Court, the injunction was lifted in August 1977 and the Hyde Amendment went into effect the same year.

Because Congress had passed the Hyde Amendment as part of the annual appropriations bill, legislators had to vote on it every subsequent year. Thus in 1977, the House again passed the Amendment, this time calling for a total ban on abortion funding for the purpose of preventing "the slaughter of innocent, inconvenient unborn children." [7] When that version came up for a vote in the Senate, pro-choice Senators pressed harder than they had in 1976 for an exception for "medically necessary" abortions. [8] The debate lasted for six months, holding up a \$60 million appropriations bill. There were 25 roll call votes in the House in an attempt at a compromise but the hard core opponents of abortion were holding out against all exceptions.

During the debate, many members of Congress revealed their contempt for and mistrust of women, and especially poor women. For example, in opposition to a health exception, one

House member said, "We don't want a woman who wakes up with a hangnail to be able to get an abortion." [9] In response to the effort to include rape as an exception, Representative Silvo Conte from Massachusetts pushed for the language of "forced rape," arguing that without the stipulation, "any woman who wants an abortion under Medicaid could go in and say, 'I'm raped,' and there could be a lot of perjury." [10] Throughout this period there were no hearings, no witnesses called, no medical testimony, and virtually no factual evidence cited in the debate.

Ultimately lawmakers reached a compromise to include exceptions: "...where the life of the mother would be endangered if the fetus were carried to term...for victims of rape and incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service; or ... where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term when so determined by two physicians." [11]

In 1980, three years after Congress reached a compromise on these exceptions, the judicial branch again weighed in on the Hyde Amendment. The Supreme Court responded to the appeal brought by abortion opponents to Judge Dooling's 1977 ruling, deciding in *Harris v. McRae* that the Hyde Amendment was constitutional. [12] Thus far this has been the only lawsuit to directly challenge the legality and constitutionality of the Hyde Amendment.

Post-Hyde Funding Restrictions

In the early years of the Hyde Amendment, the political climate had swung to the right on many issues. Anti-welfare sentiments dovetailed with opposition to abortion across party lines. [13] As Republicans stepped up their attacks on welfare, Democrats did not want to be tagged as pro-welfare. President Carter had come to power in part through the support of Evangelicals and he and Joseph Califano Jr, Secretary of HEW,

pledged to oppose using federal funds for abortions under Medicaid or under any new national health insurance plan. In a statement after the Supreme Court decided that states were not compelled to fund abortions, Carter re-affirmed his position and showed complete disregard for poor women, commenting, "As you know there are many things in life that are not fair, that wealthy people can afford and poor people can't." [14]

In Congress, anti-abortion forces continued to vigorously oppose all Medicaid funding for abortion and by 1981 the physical health, rape, and incest exceptions were dropped. Anti-choice legislators added "Hyde-type" language to other appropriations bills including a Department of Defense bill, a District of Columbia bill, and a Treasury-Postal Service bill. Through this strategy, they broadened restrictions to include denial of abortion coverage in federal employee health plans, for federal prisoners, military personnel and their families, and Peace Corps volunteers. [15] Today such restrictions are placed in virtually all federal programs.

Adding restrictions to appropriations bills was also an effective strategy at the state level. Before Hyde, 13 states had enacted funding bans. Even though the Hyde Amendment didn't mandate states to follow suit, it gave them the green light to do so and provided an incentive. Because Medicaid is a joint federal and state program, banning federal funding for abortions meant that states would have to shoulder the total cost. Thus it is not surprising that by 1979, 40 states followed the federal lead and cut off state funding. Some also eliminated coverage of abortion in state employee health plans.

Congress did not re-instate any exceptions to the ban on funding in the Hyde Amendment until 1993, when the National Black Women's Health Project spearheaded the Campaign for Abortion and Reproductive Equity (C.A.R.E.), a political mobilization to defeat Hyde. While Hyde was not repealed, the

Campaign did succeed in once again broadening the exceptions to include rape, incest, and women whose physical health was in danger. It also built a strong and broad coalition, which included labor and civil rights groups, and was important in bringing visibility to the issue of economic barriers to abortion. Inspired by the earlier effort, seven years later NNAF launched C.A.R.E. 2000 – the Campaign for Access and Reproductive Equity. This two-year coalition effort brought issues of access to abortion and reproductive health care for low income women and women of color to the forefront of the pro-choice movement.

Abortion opponents have continued to attack public funding for abortion both in Congress and in the states. In 1997 the US Congress affirmed the rape and incest exceptions, but tightened the life exception so that federal funding covers the abortion only if the woman's life is threatened by continuing the pregnancy.

Impact of the Hyde Amendment

Before Congress cut off federal funding Medicaid paid for almost one-third of all abortions-about 300,000 annually.[16] After the Hyde Amendment, the federal government paid for virtually none.[17] The average cost of an abortion at that time was \$285, forty-four dollars more than the average total monthly welfare payment for a family of four. In Mississippi, because welfare payments are someeager, the average cost of an abortion is four times higher than the average welfare payment for a family of four.[18] Today the average price of an abortion is \$468.[19] When adjusted for inflation, this price has remained pretty steady since Roe v. Wade. However, it is still out of reach for thousands of women. In addition, although the abortion funds which compose NNAF offer financial assistance to as many women as possible-collectively to about 20,000 women annually-the women we are able to serve represent only a fraction of the need expressed by pre- Hyde Medicaid payments.

Funding restrictions do not appear to have led to the large scale increases in maternal mortality that abortion rights advocates had feared. But the consequences have been devastating for poor women, who are disproportionately women of color. In 1977, Rosie Jiménez, a Latina and a single mother, became the first woman known to have died from an illegal abortion after the passage of the Hyde Amendment.[20] There is no way to know how many other women have resorted to illegal abortions because of Hyde and other barriers to access. In a recent article, "Reproductive Regression," Carol Joffe documents an increasing number of women attempting self-abortions.[21] Many women cannot obtain abortions at all—an estimated 18-35 percent of Medicaid-eligible women carry to term because they cannot afford an abortion.[22] Other women who succeed in getting an abortion do so at great personal cost—by borrowing money, postponing bills, or forgoing other basic necessities. Nearly 60% of Medicaid recipients in a study by the Guttmacher Institute said that paying for an abortion entailed serious hardship, compared with only 26% of non-Medicaid-eligible women.[23] Given the obstacles they face, poor women disproportionately have later abortions that are also more costly. Cutting off abortion funding also encourages sterilization because Medicaid has consistently paid up to 90% of the costs for sterilization.

Responding to the Hyde Amendment

There was no large visible mobilization against the Hyde Amendment.. The reproductive rights movement focused on preserving legality rather than access. In this context, the Hyde Amendment became a cause and symbol of fractures among abortion rights advocates. It divided those who prioritized race and class issues from those who did not.

Women of color reproductive rights advocates and their allies criticized the mainstream pro-choice movement for not putting the needs of low-income women and women of color at the center of the pro-choice agenda. They formed their own

reproductive rights organizations to deal with a broad spectrum of issues and linked sterilization abuse with funding bans and other barriers to abortion access. Several abortion funds that went on to establish the National Network of Abortion Funds were also created during this period as a direct response to the lack of federal and state funding.

30 Years is Enough! Campaign Update

Nnaf launched the *Hyde – 30 Years is Enough!* Campaign in September 2006 to address the injustice caused by the Hyde Amendment and state funding bans. The campaign includes abortion funds and national and local groups working on health care access, social justice and human rights more broadly. There is a focus on state-level advocacy, where there seems to be a greater possibility for policy change. We have formed a state advocacy working group which will identify key states in which to advocate for increased public funding.

The deProsse Access Fund in Iowa and the Women's Health and Education Fund in Rhode Island are working with students, providers and other allies to document illegal Medicaid denials in their states and educate their legislators with an eye to restoring public funding for all low-income women. In states that do have Medicaid coverage for abortion, the ACCESS Fund in California and the Women's Health and Education Fund of Southeastern Massachusetts are advocating for improved access for immigrant women and young women.

Complete information about coalition activities can be found on page 7 and at <http://www.hyde30years.nnaf.org>. If you would like to support the campaign's fund raising efforts, please make a donation to your local abortion fund (see list at www.nnaf.org). If you would like more information about the campaign, please visit the website www.hyde30years.nnaf.org or contact us at 617-524- 6040.

Footnotes

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1. Suzanne Staggenborg, *The Pro-Choice Movement: Organization and Activism in the Abortion Conflict*, Oxford University Press, New York, 1991, p. 195.

2. Frederucj S. Jaffe, Barbara L. Lindheim, and Philip R. Lee, *Abortion Politics: Private Morality and Public Policy*, McGraw Hill, New York, 1981, pp. 74-75.

3. Jaffe, et al., 132.

4. Jaffe, 129.

5. Carol Emmens, *The Abortion Controversy*, Julian Messner, New York, 1987, p. 68.

6. *McRae v. Matthews*, filed in the second District court in New York City. Some commentators speculate that the Senate did not fight as hard as it might have against Hyde because they expected the courts would declare it to be unconstitutional.

7. Jaffe, 129.

8. The pro-choice Senators pressed harder for an exception mainly because they realized that they did not have the Supreme Court's support. The week after the House passed the second Hyde Amendment, the Supreme Court ruled in *Maher v. Roe*, a case from Connecticut, that states could deny funding for "nontherapeutic" abortions in their Medicaid programs.

9. Jaffe, 130.

10. Jaffe, 130.

11. Jaffe, 132.

12. The case was brought by women in need of Medicaid abortions, physicians who wanted to provide abortions for poor patients, the Women's Division of the Board of Global Ministries of the United Methodist Church, Planned Parenthood of New York City, the New York City Health and Hospitals Corporation, and, as friends of the court, 18 religious and other organizations (Jaffe, 186). Rhonda Copelon of the Center for Constitutional Rights argued the case in the Supreme Court.

13. Lawrence H. Tribe, *Abortion: The Clash of Absolutes*, W.W. Norton & Company, New York, 1990, pp. 154-155.
14. Jaffe, 132.
15. Linda J. Berkman and S. Marie Harvey, eds., *The New Civil War: the Psychology, Culture and Politics of Abortion*, American Psychological Association, Washington, D.C. 1998, pp. 6, 19.
16. Jaffe reports that in 1977 the cost for federal Medicaid abortions was \$87 million (p. 127).
17. Berkman et al. note that in 1998 federal Medicaid paid for only 2400 abortions, a 99% drop at the same time that abortion rates had risen. p. 7.
18. In Mississippi, because welfare payments are so meager, the average cost of an abortion is four times higher than the average welfare payment for a family of four.
19. National Network of Abortion Funds, "Abortion Funding: A Matter of Justice," 2005, p. 6.
20. In Texas, where she lived, state law required that state funded services be partially supported by federal funds. Even though the injunction was in place, Texas withdrew financial support for abortion after Hyde.
21. In a recent article, "Reproductive Regression," Carole Joffe documents an increasing number of women attempting self-abortions. January 23, 2006.
22. Stanley Henshaw and Laurence Finer, "The Accessibility of Abortion Services in the United States, 2001," in *Perspectives on Sexual and Reproductive Health*, 2003, 35(1), p. 20.
23. Heather Boonstra and Adam Sonfield, "Rights Without Access: Revisiting Public Funding of Abortion for Poor Women," *The Guttmacher Report on Public Policy*, April, 2000, p.2. The Alan Guttmacher Institute.