“WE WON’T GO BACK”: ABORTION BEFORE ROE V. WADE

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“ What’s the hysteria coming from?” asked Senator Ben Sasse (R-NE) as he disparaged “screaming protestors saying women are going to die” at the Senate confirmation hearings for Judge Brett Kavanaugh’s nomination to the Supreme Court.† Cecile Richards, President of Planned Parenthood of America from 2006 to 2018, responded to Sasse in a tweet:

Thinking of the women who have come up to me to tell me, with tears in their eyes, that their grandmother died of an illegal abortion. Or their great aunt. Or their mother. Or their friend. To say that women will die is not hysteria; it is a statement of fact. We cannot go back.²

To go back to the pre-Roe v. Wade era would be a return to a time when thousands of women died from illegal abortions.² A recent tactic by anti-choice activists is to claim that women did not die during the period when abortion was illegal because

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sympathetic doctors performed these abortions. These activists have misconstrued the historical record. Historian Carole Joffe has indeed found that in the post-World War II era, what she calls “physicians of conscience” performed approximately one-third of illegal abortions. These licensed doctors faced imprisonment, forfeiture of their licenses to practice and thus their source of income, and ruined reputations to support women’s decision to control their reproductive lives. What anti-choice activists in 2018 fail to acknowledge is that the remaining two-thirds of illegal abortions in the 1940s and 1950s were not performed by licensed physicians, thus forcing women to resort to strangers’ homes, kitchen tables, and dirty couches, or to self-induced abortions with drugs, knitting needles, or other objects.

The stereotype that abortion caused deaths were most prevalent among promiscuous single women is another fallacy perpetuated by both anti-choice activists and religious evangelicals. Older and younger married women, as well as single women, had abortions because they found themselves in a position at that point in their lives that made birthing an infant unfeasible. They based their decision on a variety of reasons, including family size, economics, mental health, partner abuse, career, independence, or a simple desire not to have a child.

6. Id.
8. See, e.g., Emma Green, The Progressive Roots of the Pro-Life Movement, ATLANTIC (Feb. 3, 2016) https://www.theatlantic.com/politics/archive/2016/02/daniel-williams-defenders-unborn/435369 (discussing how in the early twentieth century, there was support for the eugenic use of birth control against the sexually promiscuous).
men—whether married or single men—did not have to face. Senator Kamala Harris (D-CA) made this fact clear at Judge Kavanaugh’s hearing when she asked him, “Can you think of any laws that give government the power to make decisions about the male body?” He attempted to evade answering the question by offering “to answer a more specific question,” but finally had to acknowledge, “I’m not thinking of any right now, senator.”

In 2018, twenty percent of American pregnancies ended in abortion. Surgical techniques to terminate pregnancies are some of the safest medical procedures if done by health professionals in a hygienic environment. Overturning Roe v. Wade or even allowing further restrictions on abortion will not eliminate abortion; such action will simply force women and trans people to resort to the same illegal underground services upon which their mothers, aunts, and grandmothers relied. As Richards concluded, “We cannot go back.” This article offers a brief history of abortion in America prior to Roe v. Wade and uses data from Rhode Island to offer a microcosm of the detrimental impact illegal abortions had on women.

From the founding of the British colonies in the Americas through the early national period, family matters, including the control of reproduction, remained a private concern. State laws did not obstruct the use or dispersal of contraceptives, including abortifacients. The majority of Americans did not consider

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13. Id.
abortion legally or morally wrong as long as it occurred before quickening, the mother’s first perception of fetal movement. In Rhode Island, as in other states, abortion was legal until the mid-nineteenth century. While the Ladies Moral Reform Association condemned abortion because it allowed men to “cloak their sins” of seduction, few other groups openly criticized abortion. In fact, in the 1850s the Davol Manufacturing Company of Providence competed nationally in the manufacture of abortive instruments; The Rhode Island Medical Reformer: A Family Journal for the Promotion of Health and Longevity advertised abortifacients; and the Providence Medical Association listed average abortion fees as $20.00 ($647 in 2018 values). Yet when Henry Miller, President of the newly founded American Medical Association (“AMA”), sent a letter to the Rhode Island Medical Society (“RIMS”) in 1860 regarding AMA attempts to outlaw abortion, RIMS members lobbied the state legislature to pass an anti-abortion statute in 1861. The law allowed an exemption to save the woman’s life, and it was one of only two state laws that maintained women’s immunity from prosecution, a protection women in Rhode Island maintained through the twentieth century. In 1873, the United


19. See LINDA GORDON, WOMAN’S BODY, WOMAN’S RIGHT, supra note 18, at 52–53.


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States Congress passed the Comstock Law in response to pressure from social purity advocates, specifically, Anthony Comstock, President of the New York Society for the Suppression of Vice.25 This legislation forbade the importation, mailing, and interstate transportation of articles and literature concerning both contraception and abortion.26 Again, Rhode Island differed from the national norm: while Rhode Island banned abortion, it was one of only a few states that did not prohibit contraceptives during the social purity and Comstock crusades of the late nineteenth century.27 Nonetheless, by the end of the century, every state legislature except Kentucky had outlawed abortion.28

This national transformation in reproductive policies resulted from a number of factors. One of the most significant was nativism, the desire to protect the white Anglo-Saxon characteristics of the nation, which constituted the most publicly employed justification for the repressive changes in reproductive policies during the nineteenth century.29 Nearly a century earlier, Thomas Jefferson had expressed similar fears, “The circumstances of superior beauty, is thought worthy of attention in the propagation of our horses, dogs, and other domestic animals; why not in that of man?”30 He contended that children born of mixed-race unions produced “a degradation to which no lover of his country, no lover of excellence in the human character can innocently consent.”31 The fate of the white race in his home state of Virginia weighed heavily on his mind: “Under the mild

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26. Id. at 4.
28. Mitchell v. Commonwealth, 78 Ky. 204, 210 (1879) (holding that “it never was a punishable offense at common law to produce, with the consent of the mother, an abortion prior to the time when the mother became quick with child. It was not even murder at common law to take the life of the child at any period of gestation, even in the very act of delivery.”); 1910 Ky. Acts. 189 (outlawing abortion).
treatment our slaves experience, and their wholesome, though
course food, this blot in our country increases as fast, or faster,
than the whites.”32 Similar notions influenced the antiabortion
crusade in the nineteenth century, which resulted in part from
publicized vexation over the perceived imbalance in fertility rates
between the “best” and the “inferior” stock.33 Abortion among
middle and upper class white women was supposedly to blame for
the imminent downfall of the race.34 The proscription of abortion,
crusaders argued, was one way to compel the “best” women to
fulfill their responsibility to the country in bringing forth “proper”
children; that is, white, Protestant, and financially secure citizens.35

Other dynamics influenced this antiabortion campaign. After the founding of the AMA in 1847, white male allopaths
attempted to monopolize the medical profession.36 In order
for this campaign to succeed, many doctors redefined abortion from a
common practice women learned from their mothers, other
relatives, or midwives to a dangerous procedure that undermined
family and national stability unless done by an allopath to save the
woman’s life.37 This AMA campaign influenced state legislators to
pass new laws that permitted physicians to perform abortions only
to preserve the health or life of the mother, thereby allowing male
doctors, rather than women, to control procreation.38 Because
most medical schools excluded women, access to a legal abortion
rested in the hands of male physicians who took the Hippocratic
Oath, which urges against abortion.39 This oath resulted from the
ancient Greek belief that both abortion and birth were the
purview of midwives, not physicians—a distinction ignored by the
AMA crusade to regulate abortion.40

34. *Id.* at 507.
35. *Caron*, *supra* note 27, at 14–43.
38. Lisa R. Hasday, *The Hippocratic Oath as Literary Text: A Dialogue Between Law and
39. *Id.*
40. See generally Véronique Dasen, *Childbirth and Infancy in Greek and Roman Antiquity,
in A Companion to Families in the Greek and Roman Worlds* 291, 296 (Beryl Rawson
ed., 2011) (describing birth in the Greek and Roman periods as generally handled by
midwives with no men present).
Moreover, new state license requirements emerged in the late nineteenth century, most of which denied medical practitioner licenses to quacks or “irregulars,” a term to denote practitioners lacking a degree from a recognized medical school. These changes effectively transformed abortion into a medical procedure to be performed only by licensed allopaths in life threatening situations, thus banning quacks and “irregulars” from what had been a lucrative abortion market. Safety may have also influenced some antiabortion crusaders’ attitudes. Abortion, similar to other surgeries at that time, often endangered the health of the mother, especially in the United States where allopaths were slow to accept Joseph Lister’s aseptic surgical procedures. Some “irregulars” and quacks performed abortions badly, often killing or seriously injuring the patient. Lastly, scientific advancements undermined the notion of quickening, thus sparking a concern for fetal life earlier in the pregnancy. Despite the organized movement by physicians to regulate abortion, doctors were not a monolithic bloc. While some remained sympathetic to the plight of women facing unwanted pregnancies, others were more concerned with the life and health of the mother than the fetus; and still others were more interested in the life of the fetus than that of the mother. Ultimately, physicians opposed to abortion carried the day.

Doctors gained allies in their cause. Nicola Beisel argues that Social Purity advocates supported it as part of a larger anti-vice movement that “endangered elite children because moral corruption threatened to topple them from the peak of the social hierarchy, rendering them unfit for respectable society.”

41. Ginsburg, supra note 37, at 25.
42. Id. at 32–33.
45. Ginsburg, supra note 37, at 31.
46. Id. at 33.
47. See id. at 31.
48. Caron, supra note 27, at 14–43.
shared resentment of immigrants by many doctors and Social Purity advocates helped cement their alliance. Many feminists also joined the effort to ban abortions. Male doctors and women feminists each held the opposite sex responsible for what they perceived to be the “pernicious increase in abortion.” Together these groups succeeded in banning abortion and, in most states, the dispersal of contraceptives.

While the legislative campaign was successful, it did not ignite pervasive social acceptance. Just as prohibitions against gambling, prostitution, and drinking did not erase these practices from society, abortion did not disappear when the state decreed it illegal. Women continued to resort to abortion in steady numbers. The average cost ranged from $5.00 to $10.00 in the late nineteenth century ($139 to $278 in 2018 dollars), increasing to $15.00 in the early twentieth century ($398 in 2018 dollars), to $25.00 in the 1920s ($360 in 2018 dollars), and to $50.00 during the Depression ($920 in 2018 dollars). Justices in a Rhode Island Superior Court case in 1918 mentioned most women who resorted to abortion “survived the operation.” But a minority of women intent on controlling their bodies paid with their lives.

Most women who died were single, in their twenties, and sought abortions for a variety of reasons. For some, their lovers were married or engaged; others feared parental confrontation. The largest number of women who died from post-abortion complications fell into a category of male infidelity. Some examples from a Rhode Island study include Janis N., Annie E.,

Id. at 11–12.

51. GINSBURG, supra note 37, at 29.

52. Id. at 30.


54. See GINSBURG, supra note 37, at 33.

55. Id. at 33.

56. Simone M. Caron, “I Have Done It and I Have Got to Die”: Coroners’ Inquests of Abortions Deaths in Rhode Island, 1876–1938., 14 HIST. FAM. 1 (2009). For 21.21%, the abortion that killed them was not their first. Of them, 15.15% had had two previous abortions and 6% had had three previous abortions. Id. at 4 n.15.


58. See generally Caron, supra note 56, at 4.

59. Id. at 2.

60. Id.

61. Id. at 4.
and Mae B., who were pregnant by married men.62 “Mertys P., an independent entrepreneur, had an affair with one of her married employees.”63 “Rita D. had been involved for two years with Buster Lynch; when she informed him of her pregnancy, he confessed that his name was Austin O’Malley, he was married, and had four children.”64 “Doris J.’s lover was engaged to another woman.”65 “Gertrude K.’s ‘steady’ left Rhode Island for the University of Maryland to study dentistry, became engaged there but continued his relationship with Gertrude.”66 “Female infidelity occurred but not as frequently.67 Josephine H. was engaged to one man but pregnant with another.”68 “Margaret K.’s ‘steady’ believed her to

62. Id.; see also Simone M. Caron, Notes on Rhode Island Coroner’s Record (unpublished manuscript) (on file with Wake Forest Department of History) (citing R.I. Corner’s Records for Janis N, Aug. 1882, No Record Number, Box17989, Supreme Court Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s Record, 1]; Simone M. Caron, Notes on Rhode Island Coroner’s Record (unpublished manuscript) (on file with Wake Forest Department of History) (citing R.I. Corner’s Records for Annie R, Apr. 1901, Record 320, Box17994, Supreme Court Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s Record, 2]; Simone M. Caron, Notes on Rhode Island Coroner’s Record (unpublished manuscript) (on file with Wake Forest Department of History) (citing R.I. Corner’s Records for Mae B, Jan. 1934, Record 1459; Box 18075, Supreme Court Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s Record, 3].

63. Caron, supra note 56, at 4; see also Simone M. Caron, Notes on Rhode Island Coroner’s Record (unpublished manuscript) (on file with Wake Forest Department of History) (citing R.I. Corner’s Records for Mertys P, Mar. 1924, Record 965, Box 18069, Supreme Court Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s Record, 4].

64. Caron, supra note 56, at 4; Simone M. Caron, Notes on Rhode Island Coroner’s Record (unpublished manuscript) (on file with Wake Forest Department of History) (citing R.I. Corner’s Records for Rita D, Mar. 1938, Record 1697, Box 18145, Supreme Court Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s Record, 5].

65. Caron, supra note 56, at 4; see also Simone M. Caron, Notes on Rhode Island Coroner’s Record (unpublished manuscript) (on file with Wake Forest Department of History) (citing R.I. Corner’s Records for Doris J., Dec. 1932, Record 1409, Box 18074, Supreme Court Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s Record, 6].

66. Caron, supra note 56, at 4; see also Simone M. Caron, Notes on Rhode Island Coroner’s Record (unpublished manuscript) (on file with Wake Forest Department of History) (citing R.I. Corner’s Records for Gertrude K., Aug. 1937, Record 1651, Box 18078, Supreme Court Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s Record, 7].

67. Caron, supra note 56, at 4; see also Caron, Notes on RI Coroner’s Record, 7, supra note 66.

68. Caron, supra note 56, at 4; see also Simone M. Caron, Notes on Rhode Island Coroner’s Record (unpublished manuscript) (on file with Wake Forest Department of History) (citing R.I. Corner’s Records for Josephine H., Oct. 1881, No Record No., Box
be a ‘good girl’; not wanting to destroy his image of her, she
sought sex elsewhere.”69 Outside of infidelity, the most prominent
reason for abortion among single women was fear that parents
would discover women’s premarital sexual activity.70 Mary M.,
Helen M., Jane C., Alice S., and Clara D. all lived at home and
could not bear the shame of confronting their parents with their
pregnancies.71 Two cases do not fit these categories: Sarah V. was
raped; and Agnes H.’s lover, a merchant marine, had already
shipped out when she discovered her pregnancy, preventing a
marriage.72 “For the remaining women, no clear reason is

69. Caron, supra note 56, at 5; see also Simone M. Caron, Notes on Rhode Island
Coroner’s Record (unpublished manuscript) (on file with Wake Forest Department of
History) (citing R.I. Coroner’s Records for Margaret K., Jan. 1935, Record 1571, Box 18076,
Supreme Court Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron,
Notes on RI Coroner’s Record, 8].

70. Caron, supra note 56, at 5.

71. Id.; see also Simone M. Caron, Notes on Rhode Island Coroner’s Record
(unpublished manuscript) (on file with Wake Forest Department of History) (citing R.I.
Coroner’s Records for Mary M., Aug. 1910, Record 560, Box 17998, Supreme Court Judicial
Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s
Record, 10]; Simone M. Caron, Notes on Rhode Island Coroner’s Record (unpublished
manuscript) (on file with Wake Forest Department of History) (citing R.I. Coroner’s
Records for Helen M., Oct. 1910, Record 566, Box 17998, Supreme Court Judicial
Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s
Record, 11]; Simone M. Caron, Notes on Rhode Island Coroner’s Record (unpublished
manuscript) (on file with Wake Forest Department of History) (citing R.I. Coroner’s
Records for Jane C., Nov. 1912, Record 625, Box 17999, Supreme Court Judicial Records
Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s Record, 12];
Simone M. Caron, Notes on Rhode Island Coroner’s Record (unpublished manuscript)
(on file with Wake Forest Department of History) (citing R.I. Coroner’s Records for Alice
S., Sept. 1921, Record 854, Box 18068, Supreme Court Judicial Records Center,
Pawtucket, Rhode Island); Simone M. Caron, Notes on Rhode Island Coroner’s Record
(unpublished manuscript) (on file with Wake Forest Department of History) (citing R.I.
Coroner’s Records for Clara D., June 1930, Record 1277, Box 18072, Supreme Court
Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI
Coroner’s Record, 13].

72. Caron, supra note 56, at 5; see also Simone M. Caron, Notes on Rhode Island
Coroner’s Record (unpublished manuscript) (on file with Wake Forest Department of
History) (citing R.I. Coroner’s Records for Sarah V., Oct. 1935, Record 1555, Box 18076,
Supreme Court Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron,
Notes on RI Coroner’s Record, 14]; Simone M. Caron, Notes on Rhode Island Coroner’s
Record (unpublished manuscript) (on file with Wake Forest Department of History) (citing R.I.
Coroner’s Records for Agnes H., Aug. 1906, Record 456, Box 17996, Supreme Court
Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI
Coroner’s Record, 15].
evident.” As one witness testified in the Coroner’s inquest, Lillian R. had been engaged to her lover for over two years, they both were gainfully employed, and they were both “the same creed.” “Thus no barriers, according to this witness, prevented marriage to legitimate the pregnancy.” “With the women dead and the lovers not called before the inquests, the trail of evidence falls short.” For reasons important to them or their lovers, these women terminated their pregnancies, resulting in their own lives being cut short.

Married women who died from post-abortion complications sought out the procedure primarily because of economic woes, although some did so due to extramarital affairs or desires to limit family size. “Sarah H. had two children and needed to work to help support her family.” “Lena [C.], married for only two months, realized she and her husband were not in an economic position to begin a family.” “Similarly, Rose B. was married only three months and aborted to prevent her husband from worrying about the cost of a child so early in their marriage.”

73. Caron, supra note 56, at 5; see also Caron, Notes on RI Coroner’s Record, 14, supra note 72; Caron, Notes on RI Coroner’s Record, 15, supra note 72.
74. Caron, supra note 56, at 5; see also Simone M. Caron, Notes on Rhode Island Coroner’s Record (unpublished manuscript) (on file with Wake Forest Department of History) (citing R.I. Corner’s Records for Lillian R., Apr. 1938, Record 1702, Box 18145, Supreme Court Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s Record, 16].
75. Caron, supra note 56, at 5; see also Caron, Notes on RI Coroner’s Record, 16, supra note 74.
76. Caron, supra note 56, at 5; see also Caron, Notes on RI Coroner’s Record, 16, supra note 74.
77. Caron, supra note 56, at 2.
78. Id. at 4; see also Simone Caron, Notes on Rhode Island Coroner’s Records (unpublished manuscript) (on file with the Wake Forest Department of History) (citing R.I. Coroner’s Records for Sarah H., June 1895, Record 168, Box 18000, Supreme Court Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s Record, 17].
79. Caron, supra note 56, at 4; see also Simone Caron, Notes on Rhode Island Coroner’s Records (unpublished manuscript) (on file with the Wake Forest Department of History) (citing R.I. Coroner’s Records for Lena C., Jan. 1900, Record 58, Box 17990, Supreme Court Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s Record, 18].
80. Caron, supra note 56, at 4; see also Simone Caron, Notes on Rhode Island Coroner’s Records (unpublished manuscript) (on file with the Wake Forest Department of History) (citing R.I. Coroner’s Records for Rose B., Dec. 1908, Record 519, Box 19997, Supreme Court Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s Record, 19].
with his mother, who had ten children of her own.”  
Other women were involved in extramarital affairs. “Bertha R., a thirty-
year-old Catholic, had not had sex with her husband for almost seven years when she found herself pregnant by her lover who was also her husband’s friend.”  
“Margaret P.’s husband was working in New York; they had six children.”  
She was a thirty-three-year-old Catholic who became involved with her boarder during her husband’s absence. “Some women wished to remain childless or to have no more children.” “Alice B., mother of a seven-year-old daughter, insisted on no more children.”  
The abortion that killed her was her third one that year; she vowed on her death bed that if she survived, she ‘would do it again.’”  
Eva K.’s husband was gainfully employed as a teamster; they had no children and Eva was adamant the situation remain that way.

Despite the working-class status of most of the women who died from abortions in the Rhode Island sample, their families attempted to save their lives by using whatever financial resources

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81. Caron, supra note 56, at 4; see also Simone Caron, Notes on Rhode Island Coroner’s Records (unpublished manuscript) (on file with the Wake Forest Department of History) (citing R.I. Coroner’s Records for Idia W, Mar. 1932, Record 1380, Box 18073, Supreme Court Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s Record, 20].
82. Caron, supra note 56, at 4; see also Simone Caron, Notes on Rhode Island Coroner’s Records (unpublished manuscript) (on file with the Wake Forest Department of History) (citing R.I. Coroner’s Records for Bertha R, May 1912, Record 607, Box 17999, Supreme Court Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s Record, 21].
83. Caron, supra note 56, at 4; see also Simone Caron, Notes on Rhode Island Coroner’s Records (unpublished manuscript) (on file with the Wake Forest Department of History) (citing R.I. Coroner’s Records for Margaret P, Feb. 1933, Record 1415, Box 18074, Supreme Court Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s Record, 22].
84. Caron, supra note 56, at 4; see also Caron, Notes on RI Coroner’s Record, 22, supra note 83.
85. Caron, supra note 56, at 4; see also Simone Caron, Notes on Rhode Island Coroner’s Records (unpublished manuscript) (on file with the Wake Forest Department of History) (citing R.I. Coroner’s Records for Alice B, Sept. 1897, Record 22, Box 17990, Supreme Court Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s Record, 23].
86. Caron, supra note 56, at 4; see also Caron, Notes on RI Coroner’s Record, 22, supra note 83.
87. Caron, supra note 56, at 4; see also Simone Caron, Notes on Rhode Island Coroner’s Records (unpublished manuscript) (on file with the Wake Forest Department of History) (citing R.I. Coroner’s Records for Eva K, Jan. 1920, Record 792, Box 18068, Supreme Court Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s Record, 24].
they had, or did not have. When Sarah H. became ill, her husband called for a doctor, who arrived simultaneously with a man who demanded payment for or threatened repossession of their furniture. Charles B., a meat cutter with an eight-year-old daughter, called Dr. Charles F. Marston to care for Alice, his wife of nine years. Frank K., a “teamster,” called three different doctors to his home to save his thirty-six-year-old wife.

As time progressed and more urgent health matters occurred in the hospital rather than the home, these working-class families followed suit; sixty-seven percent of women suffering from post-abortion complications died in the hospital, all of them in the twentieth century. The most prevalent abortion method was to use operative instruments such as catheters, syringes, or rubber tubes (fifty-two percent); eighteen percent employed chemicals or herbs, including mercury, oil of tansy, Wyeth’s pills, penny royal tea, and quinine; a small number (twelve percent) combined instruments and chemicals. The cause of death in over seventy-five percent of cases was infection from septicemia, septic peritonitis, or tetanus. Poison accounted for fifteen percent; and hemorrhage/shock, “twisted womb,” and pulmonary thrombosis accounted for three percent each. “Parents, husbands and friends sought state-of-the-art medical care, often consulting more than one doctor when they did not obtain the assistance they

88. Caron, supra note 56, at 17. Numerous studies have shown that the overwhelming majority of women who died from abortions were from the working class. Leslie Regan’s study in Chicago found all abortion deaths occurred among white working-class women; more than fifty percent of them were immigrants or second-generation Americans. Leslie J. Regan, About to Meet Her Maker: Women, Doctors, Dying Declarations, and the State’s Investigation of Abortion, Chicago, 1867–1940, 77 J. AM. HIST. 1240, 1246 (1991).

89. Caron, supra note 56, at 3; see also Caron, Notes on RI Coroner’s Record, 17, supra note 78.

90. Caron, supra note 56, at 3; see also Caron, Notes on RI Coroner’s Record, 23, supra note 83; Caron, Notes on RI Coroner’s Record, 24 supra note 87.

91. Caron, supra note 56, at 3; see also Caron, Notes on RI Coroner’s Record, 24 supra note 87.

92. Caron, supra note 56, at 3.

93. Id. at 4. For 18.18% of the cases, I was unable to determine the method of abortion from the available records. Id. at 4 n.14.

94. Id.

95. Id. Septicemia accounted for thirty-nine percent of deaths; septic peritonitis, thirty percent; and tetanus, six percent. In three percent of cases, I was unable to determine the exact cause of death. Id. at 4 n.22.
thought best for their loved one.”96 “Even the Depression era did not witness a decline in families seeking medical treatment for gravely ill women.”97 The doctors’ inability to save women’s lives either in the patients’ homes or in the hospital was due primarily to fatal infections in a pre-antibiotic era, not from lack of effort on behalf of the woman’s family.98 These women were loved; they were someone’s spouse, mother, or daughter, and they died a painful death.

Most of the women who died from abortion in Rhode Island took the identity of their abortionist with them to the grave.99 Only thirty-nine percent of women agreed to offer a dying declaration.100 Of these statements, fifty-four percent identified doctors while forty-six percent identified laypersons.101 “In the earlier years, more doctors were accused than lay; in fact, only doctors were identified from 1876 until 1912.”102 “Between 1918 and 1938, however, twice as many laypersons as doctors were identified.”103 “This statistic cannot be explained by an increase in state officials targeting laypersons because most statements were procured by doctors at hospitals, not by state officials.”104 “More likely the decrease in doctors named in abortion deaths resulted from increased medical knowledge about abortion safety and from an increase in laypersons entering a lucrative trade in the depressed 1930s.”105 Moreover, some doctors presumably gained these statements in private consultation with patients and may not have turned in information on colleagues and friends who were physicians.106

By the Depression, birth control (a term first used in 1914 by Otto Bobsein) and abortion became two distinct matters.107 While only a few activists called for the relegalization of abortion,

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96. Id. at 4.
97. Id.
98. Id.
99. See id. at 6.
100. Id.
101. Id.
102. Id.
103. Id.
104. Id.
105. Id.
106. Id.
107. Id.
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a vocal movement for the liberalization of contraceptive restrictions was well under way. The notion of population control gained increased public support during the economic devastation of the Great Depression. Reports concerning the high fertility rates of families on government relief helped ignite widespread indignation against “dole babies.” Such propaganda fueled a push for contraceptive dispersal among the poor through welfare organizations. By 1932, eighty-six birth control clinics were distributed among eighteen states; twenty-seven states had no such facilities for low- or no-income women.

Dire economic straits during the Depression also led both to an expansion of abortion services and to many officials looking the other way, allowing abortions to occur with less threat of penalty. Some doctors, according to historian Leslie Reagan, “specialized” in abortion and “ran what may be called abortion clinics.” Her study of a Chicago clinic found 18,000 abortions occurred between 1932 and 1941. “Most of the women were married, in their twenties, and from varied class backgrounds.” Approximately half came to the clinic with a physician’s referral, demonstrating the collusion of respected professionals in answering women’s demands for abortion. The clinic was able to operate through regular payments to the police. Such open practices occurred in many regions of the country as increasing numbers of women sought abortions.

108. See Caron, supra note 27, at 81.
109. See id. at 90–91, 117.
111. See Caron, supra note 27, 81–82.
117. Caron, supra note 27, at 106; Reagan, supra note 114, at 149–50.
118. Caron, supra note 27, at 106; Reagan, supra note 114, at 133, 149–53, 155.
119. Caron, supra note 27, at 106.
Although Rhode Island had no overt abortion clinic, abortions were prevalent nonetheless.\textsuperscript{120} The Rhode Island Birth Control League ("RIBCL") opened in 1931 as the first clinic in New England.\textsuperscript{121} While it only dispensed contraceptives to married women, in its first month of operation, thirty-seven percent of clients came to obtain an abortion; the next month, eighteen percent; the next, fifteen percent.\textsuperscript{122} "The decreasing percentage resulted from quick word of mouth that the clinic would not provide abortions."\textsuperscript{123} "Upon rejection, one woman self-induced and returned for medical assistance, demonstrating both her determination to abort and to gain clinic assistance."\textsuperscript{124} Elmer Wright, the RIBCL social worker, found that women sought abortions "in spite of the possible consequences. In fact, for the average number of living children of each patient we find a long list of self-induced abortions . . . ."\textsuperscript{125} "A thirty-three-year-old mother of four told Wright of eleven self-induced abortions, the last of which landed her in the hospital."\textsuperscript{126} "RIBCL staff estimated that 3,000 abortions occurred annually in Rhode Island and that 16.2\% of maternal deaths in 1930 and 21.2\% in 1932 resulted from abortion."\textsuperscript{127} "From their own sample, the first 800 clients reported 3,617 pregnancies: 613 ended prematurely—450 miscarriages and 167 abortions."\textsuperscript{128} "But, as their report concluded, ‘figures for miscarriage are always deceptive as few women will admit abortion; referring to it as a miscarriage and maintaining it was accidental.’"\textsuperscript{129} "[They] pointed to 1934 statistics from Rhode Island Hospital that reported 189 women hospitalized for bungled abortions; 109 had previously been

\begin{itemize}
\item \textsuperscript{120} Id.
\item \textsuperscript{121} Christine E. Nicoll & Robert G. Weisbord, \textit{The Early Years of the Rhode Island Birth Control League}, 45 R.I. HIST. 111, 112 (1986).
\item \textsuperscript{122} \textit{Caron}, supra note 27, at 106; \textit{see also} Nicoll & Weisbord, supra note 121, at 112.
\item \textsuperscript{123} \textit{Caron}, supra note 27, at 106.
\item \textsuperscript{124} Id.
\item \textsuperscript{125} Id. at 106-07.
\item \textsuperscript{126} Id. at 107.
\item \textsuperscript{127} Id.
\item \textsuperscript{128} Id.
\item \textsuperscript{129} Id. at 107; \textit{see also} Simone Caron, Notes on Reports of Planned Parenthood of Rhode Island (unpublished manuscript) (on file with the Wake Forest Department of History) (citing Reports of the Physician in Charge for Aug. 1931, Oct. 1931, and Nov. 1931, File 1931, Planned Parenthood of Rhode Island Archives, Providence, Rhode Island) [hereinafter Caron, Notes From Planned Parenthood of RI, 1].
\end{itemize}
hospitalized for abortion complications." 130 Abortion continued to be a widespread recourse for the remainder of the Depression. 131 "Twenty-two percent of new patients in 1936 reported self-induced abortions, [twenty-three] percent in 1937, twenty-two percent in 1938, and [eighteen] percent in 1939." 132 "The latter year saw an additional twenty-six women who came to the clinic seeking an abortion, totaling [twenty-seven] percent who obtained or hoped to obtain an abortion." 133 "While the RIBCL data set dealt with married women who self-induced, Rhode Island newspapers confirmed that both married and young single women sought paid abortion services." 134

The writings of Dr. A.J. Rongy, a Russian-Jewish immigrant, radical, and AMA member, also make clear the prevalence and dangers of illegal abortions. 135 The lack of access to safe abortions, he argued, forced women to resort to unwanted children or underground sometimes fatal procedures. 136 "A physician providing abortion services was ‘regarded as a sort of benign Robin Hood who defies the law to help the needy,’ and thus was ‘not stamped with a stigma of shame.’" 137

130. CARON, supra note 27, at 107; see also Simone Caron, Notes on Reports of Planned Parenthood of Rhode Island (unpublished manuscript) (on file with the Wake Forest Department of History) (citing Annual Report of the Social Worker, Nov. 1, 1934–Nov. 1, 1935, file 1935, Planned Parenthood of Rhode Island Archives, Providence, Rhode Island) [hereinafter Caron, Notes From Planned Parenthood of RI, 2].

131. CARON, supra note 27, at 107.

132. Id.; see also Simone Caron, Notes on Reports of Planned Parenthood of Rhode Island (unpublished manuscript) (on file with the Wake Forest Department of History) (citing Annual Reports of the Social Workers, files 1936, 1937, 1938, 1939, Planned Parenthood of Rhode Island Archives, Providence, Rhode Island). [hereinafter Caron, Notes From Planned Parenthood of RI, 3].

133. CARON, supra note 27, at 107; see also Simone Caron, Notes on Reports of Planned Parenthood of Rhode Island (unpublished manuscript) (on file with the Wake Forest Department of History) (citing Annual Reports of the Social Workers, file 1939, Planned Parenthood of Rhode Island Archives, Providence, Rhode Island) [hereinafter Caron, Notes From Planned Parenthood of RI, 4].

134. CARON, supra note 27, at 107; see State v. Guaraneri, 194 A. 589 (R.I. 1937); see also Simone Caron, Notes on Providence Evening Bulletin (unpublished manuscript) (on file with the Wake Forest Department of History) (citing PROVIDENCE EVENING BULL., Mar. 10, 1931, at 4; PROVIDENCE EVENING BULL., May 9, 1933, at 21; PROVIDENCE J., Nov. 13, 1932, at 11).

135. CARON, supra note 27, at 107; see also A.J. RONGY, ABORTION: LEGAL OR ILLEGAL? (1933).

136. CARON, supra note 27, at 108; see also RONGY, supra note 135, at 36.

137. CARON, supra note 27, at 108; see also RONGY, supra note 135, at 130, 140.
“The ‘organized profession’ could not ‘fly too boldly in the face of the public standards of right and wrong,’ but in private many physicians favored ‘some sort of liberalization’ because ‘[n]o matter how callous the average physician appears to be, he is not left unaffected by the pathetic and often pitiful pleadings of the woman to whom a new pregnancy is a genuine cause of distress.’”

The increasing numbers of women joining the paid workforce was “part and parcel of the emancipated femininity.” A working woman could not manage both career and childbearing. Rongy condemned laws that left women with no option but to seek abortions in “haste and fear and secret.” Forcing women and abortionists to violate state legislation increased contempt for the law in the same way that prohibition did.

Keeping abortion illegal, Rongy contended, did not stop women from seeking this medical service. In fact, many women had more than one abortion, according to the hospital statistics he compiled. “Rongy found that for every one hundred women treated for abortion complications, forty-three had had at least one prior abortion, thirty-four had had two, and eleven had had three.” In the Rhode Island sample, one in five of the women who died from abortion had had a previous abortion. For 21.21%, the abortion that killed them was not their first. 15.15% had had two previous abortions and 6% had had three previous abortions.

138. CARON, supra note 27, at 108; see also RONGY, supra note 135, at 145–46.
139. CARON, supra note 27, at 108; see also RONGY, supra note 135, at 112.
140. CARON, supra note 27, at 108; see also RONGY, supra note 135, at 150.
141. CARON, supra note 27, at 108; see also RONGY, supra note 135, at 96–97.
142. RONGY, supra note 135, at 75.
143. Id. at 103.
144. CARON, supra note 27, at 108; see also RONGY, supra note 135, at 103.
145. Caron, supra note 56, at 4 n.15; see also Simone Caron, Notes on Rhode Island Coroner’s Records (unpublished manuscript) (on file with the Wake Forest Department of History) (citing R.I. Coroner’s Records, Supreme Court Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s Record, 25].
“Clara P., a nineteen-year-old domestic servant, had had two abortions prior to the fatal one in 1876.”\textsuperscript{146} “Sarah H., a [twenty-three] year-old mother of two, had her first abortion safely with Mrs. Sutcliffe, but died in 1895 from a second procedure a year later.”\textsuperscript{147} Alice B., a married twenty-eight year-old mother, was so desperate to work that she had had three abortions in less than twelve months.\textsuperscript{148} She told Nurse Amanda Trim that “if she recovered from her third abortion and became pregnant again, she would seek a fourth.”\textsuperscript{149} “When death was imminent, she simply stated, ‘I have done it and I have got to die.’”\textsuperscript{150} Maud B., a single thirty-year-old jewelry shop clerk, had two abortions by Dr. Thomas Clarkson: one in 1909 was successful but the following year she died from complications resulting from the second abortion.\textsuperscript{151} Similarly, Mae B., a single thirty-one-year-old in a long-term live-in relationship with Charles Giles, employed Dr. John Lake for both of her abortions, one in 1931 and the other in 1934.\textsuperscript{152} Gertrude K., a live-in domestic, had her first abortion in 1929 at age sixteen with help from her mother; she did not approach her mother for help again eight years later because she said: “My mother would say I was old enough, why didn’t I take care of myself?”\textsuperscript{153}

\textsuperscript{146} Caron, supra note 56, at 4; \textit{see also} Simone Caron, Notes on Rhode Island Coroner’s Record (unpublished manuscript) (on file with the Wake Forest Department of History) (citing R.I. Coroner’s Records for Clara P., Mar. 1876, Box 17989, Supreme Court Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s Record, 26].

\textsuperscript{147} Caron, supra note 56, at 4; \textit{see also} Caron, Notes on RI Coroner’s Record, 17, supra note 78.

\textsuperscript{148} Caron, supra note 56, at 1, 4; \textit{see also} Caron, Notes on RI Coroner’s Record, 22, supra note 83.

\textsuperscript{149} Caron, supra note 56, at 1; \textit{see also} Caron, Notes on RI Coroner’s Record, 22, supra note 83.

\textsuperscript{150} Caron, supra note 56, at 1; \textit{see also} Caron, Notes on RI Coroner’s Record, 22, supra note 83.

\textsuperscript{151} Caron, supra note 56, at 4; \textit{see also} Simone Caron, Notes on Rhode Island Coroner’s Record (unpublished manuscript) (on file with the Wake Forest Department of History) (citing R.I. Coroner’s Records for Maud B., May 1910, Record 555, Box 17998, Supreme Court Judicial Records Center, Pawtucket, Rhode Island) [hereinafter Caron, Notes on RI Coroner’s Record, 27].

\textsuperscript{152} Caron, supra note 56, at 4; \textit{see also} Caron, Notes on RI Coroner’s Record, 3, supra note 62.

\textsuperscript{153} Caron, supra note 56, at 4; \textit{see also} Caron, Notes on RI Coroner’s Record, 7, supra note 66.
These repeat abortions demonstrate the resolve and risks women assumed to control their reproductive lives. While most women survived abortions unscathed, coroners’ records show that not all were as fortunate. As Rongy concluded, the “demand of women to have abortions . . . has become so insistent that the entire medical profession has, in essence, been revolutionized.”

“While his statement was an overgeneralization, young doctors [appeared] especially involved in the abortion trade. Young women ‘reluctant to go to their family doctor’ sought a physician starting a practice and offered him ‘tempting fees.’” Greed also played a role in the Rhode Island sample; Dr. L.D. Chandler told Dr. William Heimer, “Well, when they come and offer me ten or fifteen dollars ($400 in 2018 dollars) I can’t very well refuse.”

“Dr. Albert Jones testified that he first refused to assist Rose B. ‘on account of the poor pay of the family. She assured me my money was waiting for me so I went.’” Pharmacists also profited from and controlled some of this networking: women made a “beeline for the drugstore” because the druggist was in an “unusually effective position to spread the reputation of a neighborhood abortionist.” With abortion so “widespread,” Rongy concluded that laws against it were ineffective because public opinion favored “greater freedom in the matter of childbearing.”

Rongy’s concern for women’s safety and for doctors’ ability to practice medicine without state interference led him to recommend a law in the early 1930s that in many ways foreshadowed legislation proposed three decades later in the 1960s. Abortion, in his view, should be allowed in cases of rape and incest and to preserve the physical and mental health of women. This latter aspect was a considerable expansion of most existing laws that only allowed therapeutic abortion to save the life, not preserve the health, of a pregnant woman. He stipulated

154. Caron, supra note 27, at 108; see also Rongy, supra note 135, at 134.

155. Caron, supra note 27, at 108; see also Rongy, supra note 135, at 135–36. Rongy estimated that abortion fees ranged from $50.00 to $250.00 during the 1920s and 1930s. Id. at 137.

156. Caron, supra note 56, at 9; see also Caron, Notes on RI Coroner’s Record, 21, supra note 82.

157. Caron, supra note 56, at 9; see also Caron, Notes on RI Coroner’s Record, 19, supra note 80.

158. Caron, supra note 27, at 108–09; see also Rongy, supra note 135, at 143.

159. Caron, supra note 27, at 109; see also Reagan, supra note 114, at 143.

160. See Caron, supra note 27, at 109; see also Rongy, supra note 135, at 200–09.
that “illegitimacy,” desertion, and widowhood should be grounds for abortion, as should the desire of married couples with living children to avoid an additional birth to protect the economic stability and well-being of existing children. These grounds were more expansive than those of the later reform laws in the 1960s. While his law would have greatly eased restrictions, it did not protect all women’s right to choose. “A healthy married woman in an economically secure household would have had no legal recourse to abortion.”

Rongy also argued that “either parent” should “have the right of invoking” abortion, but he did not clarify how a husband could demand an abortion. This stipulation conflicted with his assertion that a woman had the right to control her body. Rongy did not argue the inverse—that is, that the husband should have the ability to prevent his wife from aborting, as late twentieth-century antichoice activists did. Both, however, promoted third-party control over the decision to abort in some instances.

Rongy’s call for the relegalization of abortion reached very few people. “Most magazines and newspapers refused to advertise his book.” Even though many individual doctors were performing or referring women for abortions, the AMA refused to push for liberalized laws because of abortion’s association with radical groups with whom conservative doctors did not wish to collaborate. Most feminists also did not push for reform, fearful that a positive stance on abortion reform would undermine the larger feminist agenda, including the legalization of birth control. “As adamant as population controllers were to achieve their agenda, even they did not advocate abortion to shape the population.” Congress also steered clear of any discussion of abortion. With no groundswell for legislative change during the

161. Caron, supra note 27, at 109; see also Rongy, supra note 135, at 200–09.
162. Caron, supra note 27, at 109.
163. Id. at 109; see also Rongy, supra note 135, at 209.
164. Caron, supra note 27, at 109; see Rongy, supra note 135, at 209.
165. Caron, supra note 27, at 109.
166. Caron, supra note 27, at 109; see also Reagan, supra note 114, at 100–01.
167. Caron, supra note 27, at 109; see also Reagan, supra note 114, at 143.
168. See Caron, supra note 27, at 109.
169. Id.
170. Id.
Great Depression and World War II, abortion remained illegal unless performed to protect the mother’s life.171

The postwar era witnessed transformations in abortion. “While the misery of the Depression and the [crucial] need of women workers in World War II covertly condoned abortion, the postwar years, according to Leslie Reagan, witnessed the ‘harshest’ crackdown on illegal abortions.” 172 “This siege, she argues, ‘was part of the repression of political and personal deviance that took place in the 1940s and 1950s.’” 173 For example, during World War II, many authorities looked the other way when women aborted or when soldiers engaged in same-sex behaviors, but once the dire circumstance of war abated, authorities cracked down on both same-sex (i.e., the Lavender Scare) and abortion practices.174 “The postwar offensive against abortion clinics undermined a reproductive health care system that many physicians had supported through referrals.” 175 Historian Loretta J. Ross argues that “white officials disproportionately targeted black physicians and midwives during this crackdown.” 176

Rhode Island officials joined the siege. “An amended abortion law allowed dying declarations as admissible evidence at trial—a trend Reagan found in other parts of the country.” 177 Using this new law, police were able to bust a decade-old abortion network that served northern Rhode Islanders, primarily those living in Cumberland and Woonsocket.178 “Every abortionist arrested in the crackdown was male.” 179 Accordingly, there are two explanations for this phenomena. Either men began to dominate what they considered to be a lucrative enterprise, or women were more subtle in plying their trade. Moreover, women could have

171. Id.
172. Id. at 138–39; see also REAGAN, supra note 114, at 15.
173. Id. at 139; see also REAGAN, supra note 114, at 15.
175. CARON, supra note 27, at 139; see also REAGAN, supra note 114, at 15, 161–64.
177. CARON, supra note 27, at 139; 11 R.I. GEN. LAWS § 11-3-3 (1956) (repealed 1974); see also Reagan, supra note 86, at 1249.
178. CARON, supra note 27, at 139; see also State v. Lorenzo, 48 A.2d 407, 410 (R.I. 1946); State v. Angelo, 52 A.2d 513 (R.I. 1947).
179. CARON, supra note 27, at 139.
been more competent than men; the court cases were derived from patients whose medical complications forced them into local hospitals.180

The illegal nature of abortion at mid-century makes precise numbers of procedures difficult to assess. “Marie Kopp’s study of a New York clinic in the early 1930s found that women aborted one out of five pregnancies.”181 Illegal abortions increased during the war, especially in large cities, as large numbers of women entered the paid workforce to fill the labor demands of a wartime economy.182 In June 1942, just six months after the United States formally entered World War II, the National Committee on Maternal Health sponsored a conference at the New York Academy of Medicine entitled “The Abortion Problem.”183 Deaths from abortions fell by the late 1940s mostly due to the introduction of antibiotics to fight sepsis.184 Most women survived abortion at mid-century.185 In April 1955, a committee appointed by the Conference on Abortion at Arden House, New York, concluded that between 200,000 and 1.2 million abortions occurred each year in the United States.186 In 1956, Dr. Mary S. Calderone of Planned Parenthood Federation of America (“PPFA”) addressed the Rhode Island Maternal Health Association (“RIMHA”) concerning increasing abortions; she placed the annual number at 750,000.187 “In Pregnancy, Birth and Abortion (1958), Paul Gebhard estimated that two thousand abortions occurred daily, mostly among married women.”188

180. Id.

181. MARIE E. KOPP, BIRTH CONTROL IN PRACTICE: ANALYSIS OF TEN THOUSAND CASE HISTORIES OF THE BIRTH CONTROL CLINICAL RESEARCH BUREAU 131 (1972)


183. CARON, supra note 27, at 139; see CYNTHIA McKNIGHT, LIFE WITHOUT ROE 3 (1992).

184. McKnight, supra note 183, at 13.


186. CARON, supra note 27, at 139; McKnight, supra note 183, at 4.

187. CARON, supra note 27, at 139; see also Simone Caron, Notes on Planned Parenthood Federation of America Files (unpublished manuscript) (on file with the Wake Forest Department of History) (citing PPFA Files for Dr. Mary. S. Calderone, Nov. 29, 1956, File 1956, Planned Parenthood of Rhode Island Archives, Providence, Rhode Island) [hereinafter Caron, Notes From Planned Parenthood of RI, 5].

188. CARON, supra note 27, at 139; see also PAUL GEBHARD ET AL., PREGNANCY, BIRTH, AND ABORTION 215 (1958).
Alfred Kinsey found that twenty-two percent of his sample of married women had experienced an abortion. 189 “During the tail end of the baby boom, police experts believed abortion to be the third largest crime in the nation behind narcotics and gambling.” 190

As this data demonstrates, despite state offensives against abortion providers, women continued to seek abortions. The demographics remained fairly constant. 191 The majority continued to be, not single, but married women. 192 Dr. Charles Potter, medical director of RIMHA (RIBCL changed its name in 1939 to RIMHA), addressed a group of Brown-Pembroke University students in 1948 on the topic of reproductive health. 193 He informed them that “Abortions are not most usual in single girls, as is popularly supposed. Ninety percent occur in married women.” 194 That same year, a married woman visited the Rhode Island clinic for reliable contraceptives because she had already resorted to three illegal abortions. 195 The crackdown on illegal abortions by state officials, and on therapeutic abortions by new hospital committees that decreased the independent judgement of individual doctors, led women to have to pay more for procedures that were increasingly difficult to procure. 196 “Secrecy intensified:


190. CARON, supra note 27, at 139; see also EDWIN M. SCHUR, CRIMES WITHOUT VICTIMS: DEVIANT BEHAVIOR AND PUBLIC POLICY 25 (1965).

191. CARON, supra note 27, at 139.

192. CARON, supra note 27, at 139; see also Kinsey, supra note 189, at 196.

193. CARON, supra note 27, at 139; see also Simone Caron, Notes on Rhode Island Maternal Health Association Discussion at Brown-Pembroke University (unpublished manuscript) (on file with the Wake Forest Department of History) (citing Dr. Charles Potter, Apr. 13, 1948, file 1948, Planned Parenthood of Rhode Island Archives, Providence, Rhode Island) [hereinafter Caron, Notes From Planned Parenthood of RI, 6].

194. CARON, supra note 27, at 139; see also Simone Caron, Notes on Rhode Island Maternal Health Association Discussion at Brown-Pembroke University (unpublished manuscript) (on file with the Wake Forest Department of History) (citing Dr. Charles Potter, Apr. 13, 1948, file 1948, Planned Parenthood of Rhode Island Archives, Providence, Rhode Island) [hereinafter Caron, Notes From Planned Parenthood of RI, 7].

195. CARON, supra note 27, at 139; see also Simone Caron, Notes on Reports of Planned Parenthood of Rhode Island (unpublished manuscript) (on file with the Wake Forest Department of History) (citing Social Worker Reports, April 1948, File 1947, Planned Parenthood of Rhode Island Archives, Providence, Rhode Island) [hereinafter Caron, Notes From Planned Parenthood of RI, 8].

196. CARON, supra note 27, at 140; see GEBHARD ET AL., supra note 188, at 199–203.
many women were blindfolded and led to the abortionist.”

“The death rate from abortions rose, doubling for New York City between 1951 and 1962.”

“For women of color, the death rate quadrupled.” Psychologically, the back-alley abortion seemed worse to women who had grown to expect medical treatment in a sterile environment during the Depression and World War II, when officials looked the other way. Some women were able to find what Carole Joffe calls ‘physicians of conscience,’ who performed about one-third of annual illegal abortions in the 1950s.”

For women without access to such physicians, other options were available. Wealthy women could fly to Puerto Rico, where a 1937 law allowed abortion to protect the life and health of the woman, or to England, Switzerland, or Mexico. They generally obtained a referral from their private doctors, who agreed to a follow-up visit upon women’s return to ensure recovery. Women lacking the financial resources to travel to other countries or territories could be referred to domestic underground services, but even these services were generally out of reach for lower-income women. Black women and some white women could sometimes rely on black physicians or midwives in southern states, although state and local officials disproportionately targeted these providers. “While hospital services had supplanted midwifery practices among most other minorities by the 1950s ([ninety] percent of births occurred in hospitals by 1948), black midwives continued to operate in the rural South, offering both abortions

197. CARON, supra note 27, at 140; see also REAGAN, supra note 114, at 193.
198. CARON, supra note 27, at 140; see also REAGAN, supra note 114, at 211.
199. CARON, supra note 27, at 140; see also REAGAN, supra note 114, at 211.
200. CARON, supra note 27, at 140.
201. Id.; see also Joffe, supra note 5, at 47.
203. CARON, supra note 27, at 140; see Joffe, supra note 5, at 50.
204. CARON, supra note 27, at 140; see Joffe, supra note 5, at 50.
205. CARON, supra note 27, at 140; see also REAGAN, supra note 114, at 205.
and contraceptives to thousands of women, both black and white.”

Health professionals, therefore, were not a monolithic bloc with regard to abortion. “Some doctors called for liberalization of restrictions at the same time their colleagues were closing legal loopholes” on therapeutic abortion. Some pushed for reform because they personally witnessed women on death’s door brought to hospitals following bungled abortions. Dr. Calderone of PPFA organized an abortion symposium in 1954 attended by physicians, psychiatrists, anthropologists, religious leaders, and legal experts who recommended easing restrictions on therapeutic abortions and contraceptive dispersal. “Yet no reform occurred for over a decade, leaving desperate women scrambling to find the safest and most accessible illegal abortions.”

Historians generally agree on the major factors that helped ignite support for abortion reform by the mid-twentieth century. Some of the incentives included the concern about population growth and its perceived negative impact on the environment; openness about sex, marital problems, and contraception; and the introduction of relatively simple and safe abortion procedures. Many doctors realized that one hundred years of criminalization had not put an end to the practice, but instead illegal abortions continued at a steady rate throughout the twentieth century.
New restrictive policies passed in the 1940s and 1950s that tightened the loopholes allowing for life-saving abortions coincided with augmented demands for the procedure, resulting in an increased death rate and health risk from illegal abortions.214

The horrible aftermath that resulted from the use of incompetent and untrained abortionists finally led some professionals to argue for a reconstruction of abortion policies. The first professional group to question restrictive abortion laws in the early 1950s was psychiatrists who had close contact with individual women facing unwanted pregnancies.215 Some medical doctors joined the cause because they resented state laws that interfered with their best medical judgment for individual patients.216 They signed a statement in 1955 advocating for statutes that would allow doctors to decide conditions for abortion.217 In 1958, PPFA requested that the American Law Institute (“ALI”) draft a new model abortion law.218 The ALI complied because lawyers could sympathize with physicians constrained in their medical practice by law.219 The resulting ALI recommendation allowed for legal abortions in three instances: (1) if the pregnancy would likely cause serious physical or mental health impairment to the mother; (2) if the birth would result in a physically or intellectually challenged baby; and (3) if the pregnancy resulted from rape or incest.220

Shortly after the ALI proposal, two events helped garner support for modifications in abortion policies. First, researchers found that the new tranquilizer Thalidomide, marketed as a cure for morning sickness, caused infants to be born with congenital disabilities.221 Second, an epidemic of German measles swept the United States from 1962 to 1965.222 Because infected pregnant

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214. REAGAN, supra note 114, at 193–94, 211.
215. Id. at 202–05, 218.
216. Id. at 217.
217. Id. at 219.
218. See id. at 220–21.
219. Id. at 220.
220. Id. at 221; CARON, supra note 27, at 189; see Luciano Lizzi, Abortion, Medicine, and the Law, 8 J. LEGAL MED. 177, 181 (1987).
221. CARON, supra note 27, at 210; see REAGAN, supra note 114, at 203.
222. CARON, supra note 27, at 189; see REAGAN, supra note 114, at 203.
women faced a fifty percent risk of bearing an infant with physical or intellectual disabilities or both, many women sought abortions. Some California doctors openly provided abortions; when police arrested them, a national uproar ensued. After substantial lobbying from various groups, the California legislature passed a bill that legalized abortion in the case of a fetus with severe disabilities and to protect the mental health of the woman; ironically, then-Governor Ronald Reagan, later a zealous abortion opponent, signed the measure in 1967. That same year, Colorado became the first state to adopt a new abortion law modeled on the example proposed by the ALI. Between 1967 and 1970, twelve states enacted new bills that extended the grounds for the legal termination of pregnancy. While still specifying certain conditions under which women could obtain legal abortions, these statutes were substantially less restrictive than the laws they replaced. In 1970, four states adopted legislation that placed no conditions on the termination of pregnancy: Alaska, Hawaii, New York, and Washington in effect legalized abortion on request. By 1972, thirteen states had passed legislation that liberalized abortion policies.

Feminist actions for abortion reform played a role in this transformation in policy. Some feminists attempted to expand the right of privacy secured in two significant Supreme Court decisions dealing with contraceptives to include protection for safe, legal abortions. In Griswold v. Connecticut, the Supreme Court declared unconstitutional a Connecticut statute that made the use of contraceptives by married persons a criminal offense. For the first time, the Court identified a “zone of privacy” guaranteed by the Constitution because the First Amendment

223. Caron, supra note 27, at 189; Rubin, supra note 212, at 21.
224. Caron, supra note 27, at 189; Rubin, supra note 212, at 21.
225. Id. at 21–22.
226. Id. at 22.
227. Id.
228. See id.
230. Two earlier cases in the appellate courts abrogated some federal limitations on contraceptives and exempted physicians from the contraceptive restrictions of the Comstock Law. United States v. One Package, 86 F.2d 737 (2d Cir. 1936); Bours v. United States, 229 F. 960 (7th Cir. 1915).
ensures the right of association, while the Fourth Amendment affirms citizens’ immunity from unreasonable search and seizure in their homes.\textsuperscript{232} Since this case, the Court has interpreted the “zone of privacy” as a Fourteenth Amendment right under the Equal Protection Clause.\textsuperscript{233} Although \textit{Griswold} invalidated an outdated law that regulated sexual morality, the Supreme Court supported contraceptive aids for married women only.\textsuperscript{234} Seven years later, \textit{Eisenstadt v. Baird} declared unconstitutional a statute that imposed a five-year jail term for distributing contraceptives.\textsuperscript{235} Invoking the Equal Protection Clause of the Fourteenth Amendment, the Court found no reason to restrict contraceptive privileges to married women: “If the right of privacy means anything, it is the right of the \textit{individual}, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.”\textsuperscript{236}

\textit{Eisenstadt} finally removed institutional standards regarding premarital intercourse. Many feminists hoped these decisions, along with the Food and Drug Administration’s approval of the pill—an effective contraceptive controlled by women—would help secure abortion reform.\textsuperscript{237} The court cases laid the judicial foundation, and the effectiveness of the pill raised many women’s expectation to remain pregnancy free, leading many of them to demand abortions when the pill failed.\textsuperscript{238} Many of these women and other reformers took to the streets. The National Organization of Women’s Declaration of Rights in 1967 demanded the right of women to control their reproductive lives.\textsuperscript{239} In 1970, thousands of women marched in the Women’s Strike for Equality, demanding abortion reform as well as the

\begin{itemize}
  \item \textsuperscript{232} Id. at 484.
  \item \textsuperscript{234} \textit{Griswold}, 381 U.S. at 499.
  \item \textsuperscript{236} Id. at 453.
\end{itemize}
creation of day care facilities and equal opportunities in employment and education.\textsuperscript{240} Many women and some sympathetic men also picketed meetings of the AMA, demanding doctors’ support for change.\textsuperscript{241} They also staged protests to influence state legislators and to raise public awareness of the issue.\textsuperscript{242}

Notions of women’s rights to control their bodies, however, had little impact on decisions to reform abortion legislation. Feminists acknowledged that they downplayed this angle because it often alienated powerful groups willing to support change for non-feminist reasons, such as population control, welfare savings, environmental concerns, and freedom of physicians to practice medicine without government interference.\textsuperscript{243} Because legal abortions did not emerge on a foundation of feminist reasoning, the right to abortion in the twenty-first century is on precarious ground.

Over the past two centuries, restrictive reproductive policies have served as barriers to equality. The impact of these policies has been felt most poignantly at the local level by women and trans people endeavoring to control their daily lives. Legal abortions are one of the safest surgical procedures for American women and trans people.\textsuperscript{244} Less than .05% of women experience any complication.\textsuperscript{245} Yet recent restrictive laws have limited access to this procedure: between 1973 and 2016, state legislatures passed 1,142 laws designed to place obstacles to women’s access to abortion.\textsuperscript{246} These laws have also led to the closing of many abortion clinics. In 2014, ninety percent of North Carolina counties were without a facility that provided abortion services.\textsuperscript{247}

\begin{thebibliography}{99}
\bibitem{See id.} See id.
\bibitem{supra text accompanying notes 168, 212.} See supra text accompanying notes 168, 212.
\bibitem{State Facts About Abortion: North Carolina, supra note 244.} Id.
\bibitem{Id.} Id.
\bibitem{Id.} Id.
\end{thebibliography}
Overturning *Roe v. Wade* will lead to death. This loss of loved ones is what American society cannot tolerate in the twenty-first century. As Cecile Richards of PPFA stated in 2016, “we cannot and we will not go back” to an era that witnessed women dying from their efforts to control their bodies.248

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