Back to the Womb

Chipping away at abortion rights state by state

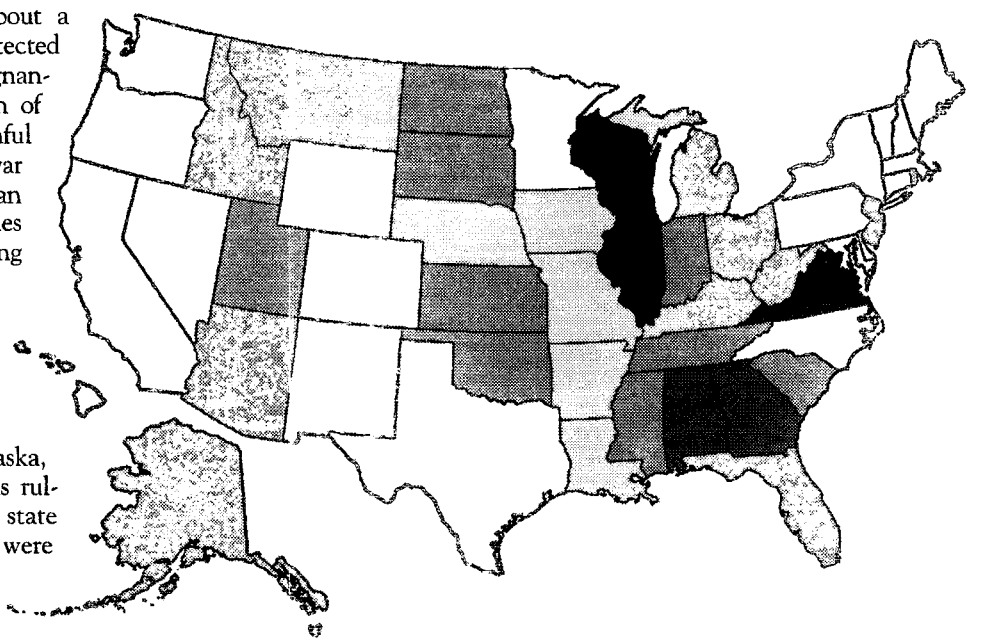
By Annette Fuentes

For anyone who still cares about a woman's constitutionally protected right to end an unwanted pregnancy, September was a schizoid month of reassuring legal victories and painful political loss. In the ongoing uncivil war over women's autonomy, both sides can chalk up one, even as the skirmishes over abortion rights seem to be edging toward yet another showdown in the Supreme Court.

On Sept. 24, pro-choice advocates scored a trifecta when the Eighth Circuit Court of Appeals in St. Louis overturned the late-term abortion laws of Nebraska, Arkansas and Iowa. The unanimous rulings on the three nearly identical state prohibitions declared that the laws were written so broadly that they would render illegal even common abortion procedures. Supposedly aimed at banning dilation and extraction abortions—the so-called "partial birth" procedure—the states' laws would place an "undue burden" on women's right to abortion, the appellate panel ruled.

If pro-choice activists couldn't thoroughly savor their win, it's understandable. Just a week earlier, they watched as Missouri legislators overrode Gov. Mel Carnahan's veto of the "Infant's Protection Act." The state's law was dubbed "atavistic" by Planned Parenthood President Gloria Feldt. Janet Benshoof of the Center for Reproductive Law and Policy (CRLP) simply called it the most restrictive abortion law in the nation.

Forget parental consent, mandatory counseling and waiting periods. Those restrictions are kid stuff. Missouri's law gives a legal defense to those who commit violent acts against abor-



The State of Late-Term Abortion Bans

Since 1995, 30 states have passed laws to ban dilation and extraction abortion procedures. Abortion rights advocates went to court in 21 states and succeeded in blocking or limiting enforcement of those laws in 18 states.

- Bans survived legal challenge.
- Bans limited by legal challenge.
- Bans not challenged.
- Bans blocked by the courts.

tion clinics or providers; it creates the crime of infanticide as a felony punishable by life in prison, and makes both the doctor and the patient receiving an abortion criminally liable. And in so doing, Missouri's law imposes harsher restrictions on women and providers than existed in the state before *Roe v. Wade* in 1973. For now, an injunction puts the law on hold until a trial in March 2000 decides its constitutionality.

For reproductive rights defenders, this one-step-forward, two-steps-back scenario has played out over and over again since the first laws banning dilation and extraction abortions appeared in 1995. Congressional attempts to outlaw late-term abortions have been stymied by presidential veto and persistent but dwindling Senate opposition to any infringements on women's right to choose. But in state legislatures across the nation, bills authored with the help of the National Right to Life Committee (NRLC), the largest anti-abortion lobby in the country with 50 state affiliates, have multiplied. In just four years, 30 states have passed laws restricting abortion procedures. Most, like the Missouri statute, use vaguely worded terms that essentially give personhood to a fetus and reduce women to wombs.

Eve Gartner, a staff attorney at Planned Parenthood, says the NRLC was the driving force behind the initial wave of state laws. The group sent around a draft bill to its legislative supporters, which described the procedure as "partial vaginal delivery." The first bill passed by Congress and authored by Sen. Rick Santorum (R-Pa.) used the NRLC model. Santorum's latest version of the bill is essentially identical to the three bills struck down by the federal appeals court in September. On Oct. 21, it passed in the Senate 63 to 34, three votes short of overriding another presidential veto.

It's in the battle for the hearts and minds of the American public that the anti-choice forces appear to have made their most significant and scary inroads.

"In virtually every case, the laws as drafted ban some of the most safe and common abortion procedures during early pregnancy," Gartner says. The Missouri law, for example, is a two-page, ambiguously worded act that doesn't specifically mention "partial-birth" abortions. Instead, it defines the terms "born," "living infant" and "partially born" so that a fetus as young as five or six weeks old could be considered a living infant. Abortions that suction the fetus could be deemed infanticide if the law were interpreted to make the fetus a viable infant and the procedure a partial birth. In criminalizing the doctor and patient, the law states: "A person is guilty of the crime of infanticide if such person causes the death of a living infant with the purpose to cause said death by an overt act performed when the infant is partially born or born."

Sensible people might conclude that efforts to pass laws restricting abortions are ultimately futile because federal courts have wasted little time in striking them down. Even Louis DeFeo, author of Missouri's law and head of the Missouri Catholic Conference, says, "To be honest, nobody knows whether this law will be constitutional or not." But anti-choice activists who have championed the "partial-birth abortion" strategy can claim significant advances on the political front even if they've suffered judicial setbacks. They've put abortion rights advocates on the defensive by focusing on one *little*-used procedure in all its gruesome detail: Labor is induced, the legs are partially delivered, the skull is punctured with a sharp object and the contents removed by suction to allow it to fit through the cervix.

Spending a reported $4 million to prime the public before the first bill was introduced in Congress, anti-choice activists have pressured moderates to stake out a position against dilation and extraction or risk being labeled a supporter. Supposedly pro-choice politicians seem to have lost their bearings—and their spines—arguing that bans on late-term abortions would be O.K. if they had an exception to protect the health and life of the mother. Gov. Carnahan is one example; he announced that he would have supported the Missouri law if it contained an exception for women's health and specified the dilation and extraction method.

For moderate Republicans who'd prefer to avoid the abortion issue entirely, dilation and extraction is a godsend. "All these Christian-right groups have given people something to rally around," Benshoof says. "The partial-birth ban gives politicians who want to seem reasonable—like George W. Bush—a place to go. It's a safe harbor. By railing against partial birth abortions, they don't have to take a stance on the real issue of choice."

Pushing the anti-choice agenda in state legislatures, even in the face of likely court defeats, also depletes the resources of advocacy groups such as CRLP and Planned Parenthood. It keeps them in court and on the defensive. Gartner notes that when Planned Parenthood won its first challenge to a state law in Michigan, it got a $250,000 settlement for attorney fees, much less than what they'd spent on the litigation. And the court action is only one front on which advocates must fight. Gartner notes that Planned Parenthood faces challenges every day in keeping the doors open at the hundreds of clinics it operates across the country. "We have to deal with adversaries on many levels," she says, "even on the level of the true crazies who resort to violence, fire bombs and guns."

Where the legal and legislative wrangling is headed is not clear. The anti-choice strategy is to chip away at abortion rights one trimester at a time, aware that support for choice diminishes as a woman's pregnancy advances. Although federal and state appeals courts have enjoined restrictive abortion laws in 18 states, the federal Fourth Circuit Court of Appeals has let stand a ban in Virginia. And, on Oct. 26, the Seventh Circuit Court of Appeals upheld laws banning dilation and extraction in Illinois and Wisconsin.

Gartner says the Supreme Court is more likely to step into a dispute when there is a split like this among the circuit courts. "No one genuinely believes that the Court will go back on *Roe v. Wade*," she adds. "The anti-choice movement may try to convince the justices to limit certain abortion procedures." The Supreme Court already revisited abortion in 1992 in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, a ruling that reaffirmed *Roe v. Wade*. But the Court also allowed states to prohibit abortions when the fetus is deemed "viable" outside the mother's womb, as long as there is an exception to protect her life.

It's in the battle for the hearts and minds of the American public, though, that the anti-choice forces appear to have made their most significant and scary inroads. A January 1998 *New York Times* poll on abortion rights compared results to those of a survey conducted 10 years earlier and found that support for legal abortion was slipping. Although the majority still supports legalized abortion, it now feels abortions should be harder to get and chosen less frequently. In 1989, 40 percent favored unrestricted access to abortion; in 1998, only 32 percent did, with 45 percent believing restrictions should be imposed. Nearly 80 percent supported parental consent for teens and 24-hour waiting periods before abortions.

But those who credit the anti-choice movement for effecting shifts in public attitudes are giving them too much. Gory pictures of fetuses have long been the stock-in-trade of anti-abortion activists, and there have always been right-to-life legislators. Anti-choice activists have been successful because they've been able to ride the wave of a persistent backlash against women and feminism. Reproductive rights are the single greatest symbol of women's modest gains and the most obvious target of fundamentalist crusaders. Without a fertile climate of hostility toward women's autonomy, anti-choice elements would still be parading around with those tacky posters of supposed aborted fetuses dumped in trash cans.

The poll's most telling statistics reflect the anti-feminist trend, with many respondents claiming that women cavalierly choose abortion instead of accepting "responsibility for having sex." In 1989, 37 percent of those polled believed a woman should be able to get an abortion if the pregnancy would interrupt her career; 10 years later, only 25 percent did. And almost half said it was too easy to get an abortion today. Ironically, data from the federal Centers for Disease Control and Prevention show that the current rate of 20 abortions per 1,000 women is the lowest rate recorded since 1975.

The anti-choice movement can rightly claim advances in making abortions more difficult to get and influencing the public debate on women's reproductive rights. But there is little proof that groups like the NRLC are becoming a larger force, just more sophisticated and able to exploit public antipathy toward women's autonomy. Twenty years ago, conservative legislators failed to make headway with a Human Life Amendment that would have granted full rights to a fetus and banned abortion. Today, that strategy has morphed into "infant protection" and "partial birth" laws at the state and federal level.

Pro-choice forces are undoubtedly on the defensive, holding the line against government intrusion into women's wombs. The bulwark of their defense has been and will continue to be the courts, charged with enforcing a woman's constitutional right to privacy and to choose to terminate a pregnancy. For as long as *Roe v. Wade* remains the law of the land, that is. But for a growing number of women, the right to choose is nothing more than a theory. State restrictions on abortions, including parental consent and term of the pregnancy, as well as the ever-shrinking pool of doctors performing abortions, scarcity of clinics and financial barriers for poor women, already make abortion inaccessible if not illegal. And in the end, that's what really matters. ■

Seattle Showdown

Citizens stand up to the WTO

By David Moberg

When the World Trade Organization planned this year's high-level meeting of trade ministers, Seattle must have seemed an ideal location—a major port city built on international trade and home to world-spanning corporations like Boeing and Microsoft. But the global trade bureaucrats are surely now having second thoughts. Tens of thousands of citizen activists—environmentalists, farmers, unionists, advocates for poor countries and a cornucopia of critics of globalization and multinational corporations—are expected to join them at the end of November, engaging in everything from teach-ins and mass rallies to civil disobedience and an eight-hour shutdown of ports on Puget Sound.

In the throng will be people like 48-year Gerald Gunderson, a Steelworker at a Milwaukee chain factory and member of the Wisconsin Fair Trade Campaign. Gunderson helped stop—for now—a multinational mining venture that threatened to pollute Wisconsin rivers and lakes prized by fishermen and the Chippewa tribe. "I would like to see the WTO just stopped entirely," he says. "I don't think it can be reformed until people affected by institutions like the WTO have representation proportionate to their numbers."

Launched in 1995, the World Trade Organization has become a lightning rod for critics of global corporations, whether they're concerned about threats to democracy, national sovereignty, genetically modified food or workers rights. In the name of promoting free trade, the WTO serves to codify the rules of the global economic game in ways that strengthen the hand of multinational corporations. In its first four years, the critics' worst fears were reinforced by decisions that consistently elevated increased trade above all other interests. The WTO, however, is a zealous handmaiden of corporate globalization, not the root cause of threats to the environment, public health or the well-being of working people. While it gives legal force and legitimacy to corporate global interests, stopping the WTO—as many protesters would like—is, at best, a first step toward creating rules for the global economy that tame corporate power and protect popular aims and democratic processes.

Compared to the General Agreement on Tariffs and Trade (GATT) that preceded it, the WTO has more power—decisions of its dispute panels are binding and a consensus of all 134 member governments is needed to block them (previously consensus was needed to enforce obligations). It also covers far more than tariffs and trade in goods. The WTO agreement ventures into protection of intellectual property rights and investments, freeing trade in services and elimination of non-tariff trade barriers. While countries frequently use non-tariff devices to unfairly restrict foreign competition, many legitimate environmental and public health regulations also may incidentally restrict trade.

Yet in the world according to the WTO, trade is supreme and unrestricted commerce is the highest value. For example, the WTO overturned U.S. regulations to promote cleaner gasoline on a challenge from Venezuela and ruled against another U.S. requirement that all shrimp fishing boats use a device to prevent harm to endangered sea turtles. In an ongoing controversy, the WTO ruled that the European Union could not ban beef containing artificial hormone residues on the grounds that there was not sufficient scientific evidence. So far, according to Lori Wallach and Michelle Sforza of Public Citizen, "no democratically achieved environmental, health, food safety or environmental law challenged at the WTO has ever been upheld. All have been declared barriers to trade."

The WTO also casts a shadow over governmental policies far beyond its actual decisions, which are made by panels of experts with a strong bias in favor of free trade and often very little knowledge about other issues affected by their rulings. Frequently, governments have retreated from a policy simply because another country has threatened—or may threaten—to file a WTO complaint. For example, Guatemala abandoned a policy, modeled on UNICEF recommendations, prohibiting any words or images that suggested baby formula was as good as breastfeeding. Gerber, whose label includes a fat, smiling baby, threatened a trade protest on the grounds that the law infringed on its trademark. In their book *Whose Trade Organization?* Wallach and Sforza note that threats of WTO action have scuttled South Korean food safety laws and weakened European bans on cruelly trapped fur. Threats also led to the defeat of Maryland legislation to boycott goods from Nigeria because of its human rights record (after the European Union and Japan had challenged a Massachusetts law prohibiting state purchases of goods from Burma) and to the veto by California Gov. Gray Davis of a law giving preference to local goods and services. The United States has threatened to go to the WTO over a Danish ban on lead in many products, South African efforts to provide AIDS drugs more cheaply, and Japanese measures to comply with the Kyoto climate change accord.

Critics contend that when the WTO presents governments with the choice of changing its laws or submitting to punitive tariffs on its exports, it threatens national sovereignty. But the fundamental challenge to national sovereignty really comes from global corporations and markets. Any international agreement represents a partial surrender of sovereignty in exchange, in theory at least, for some greater good. A "world trade organization" should manage trade in the interests of human rights, environmental protection, local economic development and other ends. Indeed, the Havana