

Lawmakers whittling away at reproductive justice

By Kate Pickert, Time

It's 8am on a Wednesday, and Tammi Kromenaker is on the phone, trying to untangle an insurance snafu.

After 15 minutes of arguing with a billing operator, the director of the Red River Women's Clinic in Fargo, N.D., begins preparing for the patients who will soon arrive. Staff members trickle in. One puts a DVD of old sitcoms on the waiting-room television. Another straightens a pile of magazines. Someone brews a pot of coffee. By 10 a.m., the clinic is bustling with patients. Before the day is over, 18 women will undergo surgical abortions at Red River. Four others will receive abortion-inducing medication.

Kromenaker, a social worker, was born in January 1972, one year before the Supreme Court decided *Roe v. Wade*. She has spent her entire adult life providing abortion services and is among hundreds of clinic directors across the U.S. navigating an ever increasing number of state-imposed abortion regulations. At Red River, the only abortion clinic in North Dakota, a woman must wait 24 hours between scheduling an appointment and arriving at the facility. Once there, she must undergo a counseling, verification and testing process that lasts up to five hours. If she is a minor, she must notify her parents; get permission from one or both, depending on who has custody; or get approval from a judge. Like Medicaid programs in some 30 other states, North Dakota's does not cover abortion services except in instances of rape or incest or to protect the life of the mother.

In the past two decades, laws like the ones that govern appointments at Red River have been passed with regularity as

pro-life state legislators have redrawn the boundaries of legal abortion in the U.S. In 2011, 92 abortion-regulating provisions—a record number—passed in 24 states after Republicans gained new and larger majorities in 2010 in many legislatures across the country. These laws make it harder every year to exercise a right heralded as a crowning achievement of the 20th century women's movement. In addition to North Dakota, three other states—South Dakota, Mississippi and Arkansas—have just one surgical-abortion clinic in operation. The number of abortion providers nationwide shrank from 2,908 in 1982 to 1,793 in 2008, the latest year for which data is available. Getting an abortion in America is, in some places, harder today than at any point since it became a constitutionally protected right 40 years ago this month.

It might seem as though recent electoral victories by Barack Obama and congressional Democrats set the stage for a reversal of this trend. The President's campaign mobilized Democratic voters and women around the issue of reproductive rights—an effort that produced, according to some exit polls, the widest gender voting gap in history. But while the right to have an abortion is federal law, exactly who can access the service and under what circumstances is the purview of states. And at the state level, abortion-rights activists are unequivocally losing.

Part of the reason is that the public is siding more and more with their opponents. Even though three-quarters of Americans believe abortion should be legal under some or all circumstances, just 41 percent identified themselves as pro-choice in a Gallup survey conducted in May 2012. In this age of prenatal ultrasounds and sophisticated neonatology, a sizable majority of Americans supports abortion restrictions like waiting periods and parental-consent laws. Pro-life activists write the legislation to set these rules. Their pro-choice counterparts, meanwhile, have opted to stick with their longtime core message that government should not interfere at

all with women's health care decisions, a stance that seems tone-deaf to the current reality.

Pro-choice activists' failure to adapt to the shift in public attitudes on abortion has left their cause stranded in the past, says Frances Kissling, a longtime abortion-rights advocate and former president of Catholics for Choice. Kissling is part of a small group within the pro-choice movement trying to push the cause toward more nuanced stances. "The established pro-choice position – which essentially is: abortion should be legal, a private matter between a woman and her doctor, with no restriction or regulation beyond what is absolutely necessary to protect the woman's health – makes 50 percent of the population extremely uncomfortable and unwilling to associate with us," she says.

At the same time, a rebellion within the abortion-rights cause – pitting feminists in their 20s and 30s against pro-choice power brokers who were in their 20s and 30s when Roe was decided—threatens to tear it in two. Many young activists are bypassing the legacy feminist organizations that have historically protected access to abortion, weakening the pro-choice establishment at the very moment it needs to coalesce around new strategies to combat pro-life gains and connect with the public.

As memories of women dying from illegal pre-Roe abortions become more distant, the pro-choice cause is in crisis. In 1973, female lawyers from the Center for Constitutional Rights said Roe v. Wade was "a tribute to the coordinated efforts of women's organizations, women lawyers and all women throughout this country." Writing a new playbook for the pro-choice cause – one that ensures that Roe is not overturned and that access to abortion is preserved and even expanded – would require the same kind of coordination. If abortion-rights activists don't come together to adapt to shifting public opinion on the issue of reproductive rights, abortion access in America will almost certainly continue to erode.

In many ways, the fight to preserve access to abortion is even more daunting than the fight to legalize it 40 years ago. In a dynamic democracy like America, defending the status quo is always harder than fighting to change it. The story of pro-choice activism after Roe reveals that there may be nothing worse for a political movement's future than achieving its central goal.

Around her workspace at Red River, Kromenaker has tacked up photographs of her daughter and phone numbers for the Fargo police department and a security hotline operated by the National Abortion Federation. In the filing cabinet behind her desk, she keeps a green folder full of mail from pro-life activists. The correspondence ranges from vaguely threatening notes to prayers on behalf of Kromenaker, the doctors who work at Red River and their patients. Kromenaker is proud and outspoken about her work, but she takes different routes to work every day to avoid falling into a routine that might make her a target for pro-life zealots. (Abortion doctor George Tiller was at his regular Sunday church service when he was shot and killed by a pro-life activist in 2009.) "Even if I'm at Target looking at clothes, I never let my guard down," she says. It might seem like paranoia to be so vigilant, but in the late 1990s, Kromenaker testified at the trial of a man accused of trying to start a fire at a clinic where she worked before Red River.

In 2011, Kromenaker testified again, this time at a committee hearing in the North Dakota state senate, which was considering a bill passed by the house that sought to ban medication-induced abortions, among other provisions. Despite Kromenaker's testimony and the efforts of pro-choice activists in North Dakota, the bill passed the state senate 42 to 5 and was signed into law on April 18, 2011. (Red River is suing to overturn the law, which a judge has blocked from going into effect.)

In November, feminists celebrated the defeat of U.S. Senate

candidates Todd Akin of Missouri, who said a woman's body can resist a pregnancy in the case of "legitimate rape," and Richard Mourdock of Indiana, who said pregnancies conceived in rape are "intended" by God. Even before Election Day, Cecile Richards, president of Planned Parenthood, said, "This past year and a half has been a remarkable period of unifying women and men and a whole new generation of folks who understand that none of these rights or access can be taken for granted."

Yet the candidate who beat Mourdock, Democrat Joe Donnelly, is also pro-life and believes abortion should be illegal except in cases of rape or incest or to protect the life of the mother. Voters in Indiana also elected conservative Republican Representative Mike Pence as the new governor. Pence has been introducing legislation since 2007 to eliminate federal funding for women's-health clinics that provide abortions, including a GOP House effort to defund Planned Parenthood in 2011. And in North Dakota, which has a Republican governor and legislature, Kromenaker is girding for new legislation she expects to be introduced that would grant fetuses "personhood" status and directly challenge the constitutional basis for *Roe v. Wade*.

The modern era of state restrictions on abortion began in 1992 with the Supreme Court's decision in *Planned Parenthood v. Casey*. The court upheld *Roe v. Wade* but said states have a right to regulate abortion as long as they don't write laws that impose an "undue burden" on women. Pro-life politicians enacting laws to limit abortion are now testing the limits of the *Casey* ruling. Their ultimate goal is to land another abortion case before a sympathetic Supreme Court in an attempt to overturn *Roe*. Along the way, in what Charmaine Yoest, president of the antiabortion group Americans United for Life, describes as a strategy to "work around *Roe*," pro-life activists hope to severely – or completely – curtail access to abortion at the state level.

In Mississippi, pro-life activists pushed for passage of a

2012 law requiring that doctors who perform abortions have admitting privileges at local hospitals. None of the out-of-state physicians who perform abortions at the state's sole abortion clinic have these privileges. The clinic remains open while a federal judge examines the constitutionality of the law and whether it presents an undue burden to women seeking abortions. Governor Phil Bryant, who signed the law, said it was part of an effort to "end abortion in Mississippi."

The Volunteer Women's Medical Clinic in Knoxville, Tenn., was open for 38 years before it closed in August 2012, citing the state's Life Defense Act, passed earlier in the year, which also requires doctors to have hospital admitting privileges. A doctor who worked at the facility obtained hospital privileges but died suddenly of a stroke, and clinic director Deb Walsh said she couldn't afford to keep her doors open while she tried to replace him.

In Virginia, the state board of health adopted a rule last year requiring abortion clinics to comply with architectural zoning regulations for hospitals. Like the Mississippi law and one just enacted in Michigan requiring abortion clinics to be licensed, the Virginia rule seems designed to make clinics safer, but there is little evidence that women's health had previously been in danger. Loretta Ross, who co-founded Sister Song, an Atlanta-based reproductive-rights group focused on the needs of women of color, is among those in the pro-choice movement who marvel at the pro-life strategic vision even though she opposes its goals. "The entire women's-health movement was predicated on the lack of women's safety and gender consciousness in health care settings," says Ross. "It is a classic example of our opponents learning from us and taking our script."

In fact, those most affected by new zoning laws are independent clinics like Red River, whose tight margins make it financially burdensome for them to adapt to new requirements. Planned Parenthood is the largest abortion

provider in the U.S., but independent clinics collectively deliver the majority of abortions in America. And as abortion services have become concentrated in specialized clinics – as opposed to hospitals, which accounted for the vast majority of abortion facilities in 1973 – clinics have become easier targets. Pro-life groups celebrate every clinic closure.

The other strength of the state-based clinic laws, which often are based on text written by pro-life activists and lawyers and distributed to lawmakers, is that they are hard to campaign against. The zoning regulation in Virginia, for example, would require abortion clinics to widen all hallways to 5 feet. “Is that the kind of thing that will rally voters?” asks Cristina Page, author of the book *How the Pro-Choice Movement Saved America*. “‘We’re not going to expand these hallways to be 5 feet wide!’ is not a compelling message. The villain is now in the fine print.”

When the Red River clinic opened in downtown Fargo 15 years ago, the surrounding area was a sea of blight and empty storefronts. In the years since, the area has undergone a dramatic revitalization that recently earned it a spot on a list of great neighborhoods in America. Two doors down from the clinic, customers of a deli check out using iPads. Across the street, a boutique hotel and restaurant serves upscale cocktails and locally sourced food.

The beige brick building that houses the clinic looks like a vestige of a more hostile era. A glass-block wall shields those inside from view. The lock on the interior door is operated by a switch inside, and patients are buzzed in only if they have appointments. Twenty to 25 abortions are performed every week at Red River, and the procedures are usually all scheduled on a single day. On these days, a staffer inside watches a set of closed-circuit televisions monitoring the entrance and the handful of protesters from a local Catholic church who show up and mill around out front with graphic signs showing aborted fetuses.

The atmosphere outside is tense, but inside, on the second floor, the waiting room is filled with sunlight. Lush houseplants are perched everywhere, and signs and posters decorate the walls: YOU ARE BEAUTIFUL. WE TRUST WOMEN. WELL-BEHAVED WOMEN RARELY MAKE HISTORY.

Kromenaker, who has run Red River since it opened, was born in a small town in northern Minnesota. Her family later settled in a suburb of Minneapolis, and Kromenaker graduated from Minnesota State University at Moorhead, just a few miles from Fargo. She and her husband, a California native, have stayed put in part so she can continue her work. "We're committed to this clinic," she says.

In Fargo, Kromenaker is battling the state legislature and the local pro-life community. But in Washington, establishment pro-choice activists are dealing with another set of threats that are mostly self-inflicted. What pro-choice activists call "the movement" is in many ways more fragmented than it's ever been, thanks to a widening generational divide. The problem is rooted in leadership, which is concentrated in a small but powerful army of women who were in their 20s and 30s when Roe was decided and who now oversee a number of establishment feminist organizations, including NARAL Pro-Choice America, run by Nancy Keenan, 60; the National Organization for Women, headed by Terry O'Neill, 60; and Feminist Majority, run by co-founder Eleanor Smeal, 73.

Some of these leaders and their similarly aged deputies have been reluctant to pass the torch, according to a growing number of younger abortion-rights activists who say their predecessors are hindering the movement from updating its strategy to appeal to new audiences. This tension had been brewing for years, but in 2010, Keenan told *Newsweek* that she worried that the pro-choice cause might be vulnerable because young people weren't motivated enough to get involved. The complaint struck young activists like Steph Herold, 25, as an effort to place blame on others for mistakes the establishment

pro-choice movement has made along the way. "They are the generation that gave us legalized abortions, but they also screwed up," says Herold, pointing to the pro-choice establishment's failure to stop the 1976 Hyde Amendment, a law that prohibits federal funding of abortions and disproportionately affects poor women. At a conference last May, Herold heard a women's-clinic owner who has worked in the abortion field for some 40 years echo Keenan's complaint—that young people aren't involved enough in the pro-choice movement. Herold was furious. She stood up and, trembling, walked to a microphone. "We're counseling your patients and stuffing your envelopes," Herold told the clinic owner. "You should be talking to us and not just about us."

The power struggle isn't based on differences over the right to access abortion. Young activists fighting for reproductive rights have the same hard-line view of abortion access as their predecessors: they say it should be unrestricted by state governments and that the decision to terminate a pregnancy should be left solely to women and their doctors. But the infighting could splinter the movement if the younger generation abandons those feminist institutions that have traditionally been the headquarters for voter-mobilization campaigns, fundraising and lobbying, the lifeblood of any political movement. Erin Matson, 32, became a vice president of NOW in 2009 but recently resigned. "When you want to build a jet pack, sometimes that means you have to leave the bicycle factory," she says.

Matson says she is considering starting a new organization to specifically target young people. "A number of young women are just saying, 'To hell with it, I'm just going to lead,'" she says. "It's easier for young women to exercise leadership right now than before we had this technology." The technology Matson refers to is the Internet. Last February, when the Susan G. Komen breast-cancer foundation eliminated its long-standing grant funding for Planned Parenthood, a backlash

quickly ensued on Twitter. Under tremendous pressure, Komen reinstated the funding. After the episode, says Herold, "No one can say anymore that young people don't care about this issue."

In addition to being nimbler at Web-based activism, young feminists have another advantage when appealing to millennial voters, who will make up some 40% of the electorate by 2020: relatability. "We need more leaders in this movement who are of reproductive age," says author Page, 42. Sandra Fluke, the law student Republicans barred from testifying before a congressional committee last year, was a valuable asset to the pro-choice cause in part because of her relative youth. She spoke publicly about the personal reproductive rights and birth control choices of her peers. Keenan, who has become aware that her own age might impede her effectiveness, announced last May that she would step down in 2013. She said she hoped a younger person could replace her. "They're chomping at the bit to have their opportunity," she says.

Young abortion-rights activists have a strategy to modernize the cause, which includes expanding it. They often don't even mention the term pro-choice, which they say is limiting and outdated. Instead these young leaders have embraced a cause known as reproductive justice – a broader, more diffuse agenda that addresses abortion access but also contraception, child care, gay rights, health insurance and economic opportunity. "It's a more holistic frame," says Matson. "And you see younger people connecting with that."

The term reproductive justice was coined in the 1990s by black feminists who wanted to broaden the appeal of reproductive rights and speak to the needs of African-American women, whose abortion rate is 3½ times that of white women. "The pro-choice movement would focus on 'Let's open more clinics.' The anti-choice movement would say, 'Let's stop women from going into them,'" says Ross, 59, of Sister Song. "Those of us in the reproductive-justice movement would say, 'Let's ask why there

is such a high rate of unintended pregnancies in our community. What are the factors driving that?'"

Addressing issues like economic disparity marks a major shift from the pro-choice messages of the 1970s that made choice the optimal virtue and an end in itself. But the shift, says Ross, is the natural maturation of the pro-choice movement and worth the extra effort. The abortion rate in impoverished black communities has remained disproportionately high despite efforts by Planned Parenthood and others to provide access to family-planning services. "What this proves," says Ross, "is that if people are not convinced that they have realistic economic and educational opportunities, you could put a clinic in a girl's bedroom and she would still think early motherhood is a better choice."

Eye contact can be hard to come by at Red River. Many patients walk the halls with their heads down and their arms crossed. In journals scattered throughout the clinic in which women are invited to express their feelings, patients write about nonsupportive husbands and boyfriends and ask God for forgiveness. They write about how they can't afford to support another child and how they are so glad Red River exists. Amid the low hum of ringing phones, the sound of a staffer reading a state-mandated script to women wafts through the clinic's upper floor: "North Dakota law defines abortion as terminating the life of a whole, separate, unique living human being."

When her name is called, a surgical-abortion patient descends a set of stairs and steps into a room where a technician performs an ultrasound. Afterward she enters an exam room and is met by the physician on duty. On this Wednesday it's Dr. Kathryn Eggleston, who informs the woman that she's reviewed her chart and asks, "Are you confident in your decision to have an abortion today?" If the woman says yes, the abortion begins; the whirring of the vacuum aspirator used to extract the fetus can be heard in the hallway. Within 15 minutes, Eggleston emerges from the room and enters another where the

removed contents are examined and photographed for the medical record.

In the recovery room, where patients rest in overstuffed leather recliners, Kromenaker chats with a 20-something woman who declined Eggleston's offer to go on birth control. "Do you have a boyfriend?" Kromenaker asks. No. Kromenaker runs through a few ancillary health benefits of birth control anyway, hands the woman some condoms and pats her shoulder.

A 24-year-old patient who drove 80 miles alone to reach the clinic says she and her boyfriend decided together not to continue her pregnancy, which was six weeks along. "Neither of us is anywhere near baby time right now. We argue over who will take the dog out some days, so I don't think the diaper changing would go much better." Another young woman at the clinic that day is less sure. When Eggleston asks if she is confident, the patient says no. Eggleston questions her further, and once it's clear that the woman is conflicted, she gives her prenatal vitamins and sends her home. The woman returns a week later. This time she does not change her mind.

About three-quarters of the patients at Red River are under 30. More than half have at least one child; about one-third have had a previous abortion; fewer than 4% are minors. These statistics roughly mirror national data. In all, more than 50 million legal abortions have occurred in the U.S. since Roe v. Wade. According to the Guttmacher Institute, a reproductive-rights group whose statistics are cited by both pro-life and pro-choice activists, nearly 1 in 3 American women will have an abortion by age 45. Some 90% of abortions occur in the first trimester of pregnancy.

The abortion war, like many other political fights, is largely waged on the margins of reality. Review the policies that have stoked widespread national debate and it's easy to assume that late-term abortions and those performed on underage girls or women impregnated by rape or incest constitute the bulk of

terminated pregnancies. In truth, these are mere slivers of the abortion story in America. And on the whole, there is little public disagreement on the merits of abortion in such cases. Most Americans support access to abortion in cases of rape or incest or when the mother's life is threatened, along with a raft of common state abortion restrictions. Gallup data shows that 79 percent of pro-choice Americans believe abortion should be illegal in the third trimester of pregnancy and that 60 percent support 24-hour waiting periods and parental consent for minors.

Establishment abortion-rights organizations oppose nearly all abortion-specific regulations. Pro-life activists view their opponents' hard line as an opportunity to use public support to push for laws that have the indirect effect of making the process of terminating a pregnancy more time-consuming and expensive. "As we work on this common-ground package of legislation, we are more where the American people are," says Yoest of Americans United for Life.

Activists like Yoest are playing a long game that kicked off when the antiabortion movement wholly adopted the label pro-life in the 1970s. Then, in the 1980s and '90s, as pro-life protesters were dragged to court over their activism at abortion clinics – blockading entrances, “counseling” patients seeking abortions and occasionally resorting to violence against doctors and staff—they slowly built a formidable legal apparatus that serves their cause today, says Joshua Wilson, an assistant professor of political science at John Jay College whose book *The Street Politics of Abortion* will be published this year. Of pro-life activists he says, “If they can get laws on the books, great, because they have the legal resources to defend them when they're challenged. It's an integrated strategy that's very impressive.”

The antiabortion cause has been aided by scientific advances that have complicated American attitudes about abortion. Prenatal ultrasound, which has allowed the general public to

see fetuses inside the womb and understand that they have a human shape beginning around eight weeks into pregnancy, became widespread in the 1980s, and some babies born as early as 24 weeks can now survive. Cultural norms about unwed pregnancy have shifted as well in the decades since *Roe v. Wade*. "In general, the pro-choice movement leaves people with the feeling that we don't see these things as complex because the answer is almost always, Well, it's a woman's decision," says Kissling, formerly of Catholics for Choice. "And that's true, but we don't have kitchen-table conversations at the national-advocacy level."

Kissling opposes the specific state laws pushed by pro-life activists but says the pro-choice movement's effort to "normalize abortion" is counterproductive. "When people hear us say abortion is just another medical procedure, they react with shock," she says. "Abortion is not like having your tooth pulled or having your appendix out. It involves the termination of an early form of human life. That deserves some gravitas."

While a return to the pre-*roe* days of back-alley abortions seems inconceivable – even in the face of so many new state laws restricting access to abortion—there is concern among pro-choice advocates that in places like North Dakota, where the nearest abortion clinic could be hundreds of miles away, women might be driven to take unnecessary risks. Those in the abortion-provider community say they worry that women in rural areas might try to purchase pregnancy-terminating medication on the Internet without a doctor's supervision. Amplifying this fear is the fact that the generation of doctors who stepped up to perform legal abortions after *Roe* have retired or died without a robust new class of physicians to take their place. Efforts are under way at many obstetrics-gynecology and family-practice residency programs to offer abortion training to more doctors, but the specter of protests and unwanted attention remains. "It's a vicious cycle," says Eggleston of

Red River. "If more of us were doing it, there would be less stigma."

The smaller number of doctors willing to perform abortions has likely contributed to a fairly steady drop in the overall abortion rate, from about 30 per 1,000 women ages 15 to 44 in 1981 to about 20 per 1,000 in 2008, according to Guttmacher. Widespread access to birth control, which the pro-choice movement strongly supports; changing attitudes about family and fetuses; and state regulations are also cited as reasons. In theory, a lower rate of abortion might be something for both sides of the abortion debate to share credit for and even celebrate. But it also illustrates the ultimate challenge for pro-choice advocates. Their most pressing goal, 40 years after Roe, is to widen access to a procedure most Americans believe should be restricted—and no one wants to ever need.