Missouri and the Fight for Abortion Rights: How Past Became Prologue

Aug 1, 2019, 1:56pm Angela Bonavoglia

Missouri's historic battle for abortion rights presaged in important ways where we are today, and what will be required of reproductive rights advocates in the future.

The trajectory of the battle to make abortion safe and legal, as Judy Widdicombe and her contemporaries waged it, resembles the trajectory ahead for our current battle, particularly if *Roe* is overturned.

Mark Reinstein / Shutterstock.com

The time, the late 1960s; the place, St. Louis, Missouri. Judy Widdicombe, a twenty-something self-described supermom, was raising two boys with her husband, working as a labor and delivery nurse in a Catholic hospital, and volunteering one night a week as a counselor on a suicide prevention hotline.

"In those days, there was no official place a woman with an unwanted pregnancy could go for help," she told me when I interviewed her for my book, *The Choices We Made: 25 Women and Men Speak Out About Abortion.*
For a year and a half, Widdicombe witnessed the desperation many women felt up close and personal. "I saw the privileged who could pay for [abortions]," she said, and the women in "hospital beds, post-abortion, [who] were the ones who couldn't do that."

"There were a lot of kidney problems, bladder problems, and infections from incomplete abortions, where fragments of tissue were left inside," she added. "Many women died from peritonitis, an infection in the abdomen, and septicemia, an infection in the bloodstream."

Today, Missouri is poised to become the first state in the nation without a single abortion clinic since abortion was legalized by the 1973 U.S. Supreme Court decision in *Roe v. Wade*. The doors of Reproductive Health Services of Planned Parenthood of the St. Louis Region—which was founded by Widdicombe shortly after *Roe*, then purchased by Planned Parenthood in 1996—will shutter unless an administrative hearing scheduled for the end of October is decided in the clinic's favor. The hearing was caused by the Missouri Department of Health and Senior Services refusing to renew the clinic's license.
Missouri is also one of seven states that passed legislation this year banning abortions before many women even know they are pregnant, as early as 8 weeks, unless there is a medical emergency, with no exceptions for rape or incest. The law is scheduled to take effect at the end of August, unless a court challenge by the American Civil Liberties Union (ACLU) and Planned Parenthood succeeds. At the same time, Gov. Mike Parson (R) has been battling the ACLU's efforts to get a referendum on the ballot in 2020, giving voters the right to decide against that draconian law.
Missouri's historic battle for abortion rights—described to me by Widdicombe and the focus of Cynthia Gorney's book, *Articles of Faith: A Frontline History of the Abortion Wars*—presaged in important ways where we are today, and what will be required of reproductive rights advocates in the future.
For one thing, Reproductive Health Services was the plaintiff in a pivotal U.S. Supreme Court case, *Webster v. Reproductive Health Services*. That was the first case to go before a Court that no longer had a post-*Roe*, pro-choice majority. It was also the first real test of the reproductive health and rights movement's ability to rally the country to respond.
In addition, the trajectory of the battle to make abortion safe and legal, as Widdicombe and her contemporaries waged it, resembles the trajectory ahead for our current battle, particularly if *Roe* is overturned. Just as people from all corners of the local community had to pull together to protect pregnant women from the toll of illegal abortion, our own battle will require the same kind of grit, courage, and collaboration. Some of our challenges will be the same, some will be different; all will be difficult, and not without risk.

The Changemakers

While Widdicombe was working at the Catholic hospital, pregnant women seeking an abortion would call the suicide hotline for which she volunteered and say, "I'm desperate. I'm going to kill myself," she explained to me when I interviewed her back in 1989. (Widdicombe died in 2011.)

After way too many such suicide calls, Widdicombe—along with the psychologist who headed the suicide hotline, a local doctor, a cleric, a lawyer (who would later argue the *Webster* case), and a campus minister—decided to act. In 1968, in direct violation of Missouri law that made it a felony to produce, promote, procure, or cause an abortion, they came together to form the Clergy Consultation Service of Missouri. Their group became part of the pioneering national network that began a year later, the National Clergy Consultation Service on Abortion, founded by the now legendary Reverend Howard Moody and his colleague Arlene Carmen at Judson Memorial Church in Manhattan.
The way the Missouri Service worked, as Gorney describes in great detail, was through a telephone network of clergy, physicians, counselors, and abortion providers. The service's number rang on Widdicombe's back porch, where she or her husband (when she was at work delivering babies) answered the calls, directing the women to a clergyperson they would see face-to-face to be counseled about their abortion decision.

"Clergy agreed to participate because they knew that the illegal abortion rate was high," Widdicombe told me. The big advantage was that "clergy had the cloak of confidentiality around them," she added. "We got churches to give us space, and we would send women and their families on an appointment basis to different churches around the city and then the state." Volunteer counselors—at first only clergy, but later non-clergy as well—would go to different churches and help women through the crisis, sending them for abortions and for ongoing counseling afterwards if they needed it.

> "I saw the privileged who could pay for [abortions, and the women in] hospital beds, post-abortion … who couldn't do that."
> – Judy Widdicombe

As to where the Missouri service referred women, local doctors were involved from the start and "willing to support women who had to resort to illegal abortion," Widdicombe said, "though they wouldn't *do* the abortions themselves." Gorney reports there was one local doctor who would do abortions on occasion. But the most popular and highly regarded go-to person was a St. Louis midwife. "The local doctors got her equipment, backed her up, sent their patients to her, and followed their patients, treating them if there were complications and putting them in the hospital," Widdicombe explained to me.
By 1970, the Missouri service was referring about 30 or 40 patients a week from St. Louis to local providers, to clinics in Mexico where they would get off the plane with a white ribbon on their lapels so they could be easily identified by the person charged with picking

them up, or to providers in regions that had begun to liberalize their laws, such as California, New York, and Washington, D.C.

"We would spend more time getting [the women] ready to go to the airport [and] fly … than preparing them for the procedure," Widdicombe said. "They were terrified … terrified." Widdicombe tried to work out agreements with the providers to perform one out of every ten abortions for free, to accommodate the women who could not pay, women for whom the Missouri service raised the airfare.

Widdicombe and her husband also opened their house to women post-abortion, reported Gorney, mostly very young women who said they could not go home. The Widdicombes gave the women a bed, a private room, and the spare bathroom, supporting them through the termination process.

Instant Backlash After *Roe*

The Missouri service remained in place until the *Roe* decision came down. Within five months of that ruling, Widdicombe and her compatriots opened Reproductive Health Services, the first outpatient abortion clinic in Missouri and the whole Midwest. They were ecstatic.
"We offered counseling, abortion, and contraceptive education," Widdicombe said. "Finally, every woman who needed an abortion wouldn't have to get on an airplane. Those who had to travel would be traveling, at most, from 300 miles across the state instead of 2000 or 3000 miles across the country."

But that excitement was short-lived. In no time at all, anti-choice protesters descended on the clinic. **"**We expected things to get easier," Widdicombe said. "We were so naïve." What Widdicombe described as "peaceful sidewalk picketing" quickly began at the clinic, which was situated just three blocks from the St. Louis Cathedral, in what Widdicombe noted was a very Catholic city. For the first four or five years, they had pickets almost daily, she said. "In the late 70s," Widdicombe explained, "we began to see militant, anti-choice activists like Joe Scheidler, a right-wing Catholic from Chicago, a former Benedictine seminarian with lots of kids, who started the Pro-Life Action League and wrote [the book] *Closed: 99 Ways to Stop Abortion*."

> "We expected things to get easier. We were so naïve."
> – Judy Widdicombe

Personal threats also began in the early 1970s. "I got death threats by mail," Widdicombe said. People would call in the middle of the night and say things like, "You're going to die. I'd be careful getting in my car tomorrow morning."

And there were bomb threats, which were only threats until one night in June of 1986. Reproductive Health Services had just opened a second clinic in western St. Louis County. Shortly after midnight, Widdicombe got a call from the police. “I had a key and they needed someone to come [to the clinic] because, they said, ‘West County’s on fire.’”

Driving over there in her car, she recalled, “I could see the flames in the sky. It was my worst nightmare come true.”

Legal Battles Brew

In no time, things began to sour politically too. After the *Roe* decision, the U.S. Congress passed the Hyde Amendment, barring the use of Medicaid to fund abortions except in cases of rape, incest, or life endangerment. The Hyde Amendment is an unconscionably discriminatory regulation that has decimated abortion access for multitudes of low-income women to this day.

At the same time, from the early 1970s on, “the Missouri legislature had been very active in promulgating legislation that was basically unconstitutional, that did not fit in within the framework of *Roe*,” Widdicombe said. Reproductive rights groups, including Reproductive Health Services, began to sue. One of those cases that would land before the U.S. Supreme Court was *Webster v. Reproductive Health Services.* It began in St. Louis when the clinic and several other plaintiffs sued over HB 1596, which in 1986 became Missouri law.

HB 1596 had a “preamble” declaring that life began at conception and that all state laws had to be interpreted to protect the “life, health, and well-being” of “unborn children.” It prohibited public employees and facilities from being used to perform or assist in abortions—or to encourage or counsel a woman to have an abortion—except to save the woman’s life. And, it required doctors to perform tests to determine fetal viability in the second trimester, beginning at 20 weeks. The U.S. District Court for the Western District of Missouri struck down each of those provisions as unconstitutional, the U.S. Court of Appeals for the Eighth Circuit agreed, and the State brought the case to the Supreme Court.

Other cases, out of Missouri and other states, had made their way to the Supreme Court after *Roe*. But the stakes in *Webster* were much higher. “We all thought that was the case that was going to overrule *Roe*,” leading reproductive rights attorney Kathryn Kolbert told me recently. As Widdicombe recalled: “Everybody was watching.”

That’s because, for the first time since *Roe*, the Supreme Court no longer had a dependable pro-choice majority. Only four avowed *Roe* supporters—Justices Harry Blackmun, Thurgood Marshall, and William Brennan, who’d voted for *Roe*, and John Paul Stevens who’d voted with them in a post-*Roe* case—were on the Court. The way the recently installed Justices Anthony Kennedy (1988) and Sandra Day O’Connor (1981) would vote was anyone’s guess.

Reproductive rights groups didn’t take any chances. Before the scheduled date for oral arguments, the major organizations held a media blitz, a rally, and the largest pro-choice march on Washington ever held until that day, April 9, 1989, drawing hundreds of

thousands. “The *Webster* case became a real catalyst for the groups to work together and begin to understand what was at stake,” recalled Kolbert.

Just three months later, on July 3, 1989, the Supreme Court issued its decision. Though three justices urged reconsideration of *Roe* and one argued that the decision be overruled, O’Connor did not join them in taking that position, thereby enabling *Roe* to live another day. But while the Court did not act to overturn *Roe,* the decision shed important light on what was to come.

Webster’s Impact

In a 5-4 ruling (O’Connor voting with the other four justices), the Court found none of the challenged provisions of HB 1596 to be unconstitutional. Writing for the majority, then-Chief Justice William Rehnquist blithely dismissed the contested language in the preamble to the Missouri law declaring that life begins at conception by defending the state’s right to value childbirth over abortion and reading the preamble’s language as “simply” expressing “that sort of value judgment.”

Justice Blackmun, in his searing dissent, vehemently disagreed. He warned of what that language could portend. “In my view, a State may not expand indefinitely the scope of its abortion regulations by creating interests in fetal life,” Blackmun wrote. “Such a statutory scheme … will have the unconstitutional effect of chilling the exercise of a woman’s right to terminate a pregnancy.”

> “We all thought that was the case that was going to overrule *Roe*.”
>
> – Kathryn Kolbert

Indeed, the notion of fetal rights has become the basis for an avalanche of restrictions that not only impede access to abortion, but are resulting in criminal charges against thousands of pregnant women for jeopardizing their pregnancies. Women across the country have been prosecuted for self-induced abortion, including medication abortion; for helping a loved one access medication abortion; for behavior during pregnancy, especially drug use (illegal *or* legal) that could harm a fetus, resulting in over 500 women prosecuted for chemical endangerment over 10 years in Alabama alone; and for, falsely and callously, being accused of causing their own miscarriages.

The *Webster* case has also been followed by a tsunami of laws based on Christian precepts, which Justice Stevens forewarned in his dissent, writing: “Our jurisprudence has consistently required a secular basis for valid legislation.” He characterized the preamble as “an unequivocal endorsement of a religious tenet of some, but by no means all, Christian faiths,” which “serves no identifiable secular purpose.”

Freedom *of* religion, in the form of religious exemptions, is now consistently triumphing over the equally urgent right to freedom *from* religion in the U.S. Constitution. Conservative lawmakers, and administrative officials in Trump’s White House, with the support of Catholics and evangelical Christians, work relentlessly to expand the right to refuse, on religious grounds, not only to provide access to abortion, but also to bake into our laws an ever expanding class of who can discriminate, against whom, and for what—

from refusing to provide retail services and types of medical care to banning birth control insurance coverage to forbidding gay couples from fostering children.

Webster's approval of Missouri's ban on public employees and facilities performing or assisting in abortions, except in the case of life endangerment, has had repercussions too. In a recent article at *Rewire.News*, investigative reporter Amy Littlefield noted that 11 states have laws today banning abortions in various kinds of public health facilities, except when the patient's life is in danger. But that exception is proving to be no safeguard at all. "Hospital officials are free to interpret what that means," reported Littlefield, in some instances, refusing to provide desperately needed abortions, "denying care to women who are sick and dying."

Furthermore, since the *Webster* decision, "Abortion opponents have been adding on to this idea of what is a publicly funded abortion," the Guttmacher Institute's Elizabeth Nash told Littlefield. Most recently, the Affordable Care Act explicitly excluded pregnancy termination from its list of essential health benefits; it also authorized states to prohibit coverage for abortions by all their marketplace plans, which 26 states did, allowing abortions only in narrow circumstances.

The *Webster* decision was perhaps most prescient in the Court's ruling that a state could require doctors to do viability testing of women as early as 20 weeks. According to an in-depth analysis of *Webster*'s impact that appeared in the *Missouri Law Review* just a few months after the Court decision, the ruling marked "the first time state intrusion into second-trimester abortions for the purpose of furthering the interest in potential human life has been upheld by the Supreme Court." Today, of course, we have more intrusions at earlier and earlier points in pregnancy—at 20 weeks, 18 weeks, 8 weeks, 6 weeks, and in Alabama's latest law, through all nine months of pregnancy. This provision in the law also usurped the doctor's judgment—another trend that would only escalate in years to come.

"There is no doubt that our holding today will allow some governmental regulation of abortion that would have been prohibited," Rehnquist wrote of one certain outcome of *Webster*. But he also imagined a safeguard that never materialized. To assume, he wrote, "that legislative bodies, in a Nation where more than half of our population is women, will treat our decision today as an invitation to enact abortion regulation reminiscent of the dark ages not only misreads our views but does scant justice to those who serve in such bodies and the people who elect them."

And yet, here we are, barreling back to those dark ages, as well as forward to a place we've never been before.

What Lies Ahead

There have been crucial Supreme Court cases since *Webster*, of course, preeminent among them the 1992 *Planned Parenthood of Southeastern Pennsylvania v. Casey* decision, argued before the Court by Kathyrn Kolbert. As she explained it, that decision reaffirmed the hallmarks of *Roe* but also introduced the undue burden standard, defined as placing a substantial obstacle in the path of a woman seeking an abortion. The fear today is that the current Court will fail to use even that standard, instead doing what Chief Justice Rehnquist was all set to do before Justice Kennedy switched sides in *Casey*: enable states to pass any so-called "rational" restriction to protect fetal life, thereby effectively banning abortion once again.

Kolbert believes that the holdings in *Roe* and *Casey* will very likely be greatly compromised or reversed, though she suspects that the Roberts' Court might delay such a cataclysmic action until after the next election. That might be in part so that what happened in connection with *Webster* doesn't happen again, so that the Court does not awaken "the sleeping giant of pro-choice Americans."

That sleeping giant is already waking up. Pro-choice advocates are gearing up to create a new under- and above-ground network committed to ensuring access to abortion. In addition to working politically at the federal, state, county, and city levels, they are building a new support system. They are raising private funds to help pay for abortions; providing travel, room, and board, including free hotel accommodations; advocating for the decriminalization of self-induced abortion (as the American College of Obstetricians and Gynecologists did); learning to perform the manual vacuum aspiration method for early abortions (following in the footsteps of the 1960s Chicago Jane Collective, which also provided the surgical procedure used with first-trimester abortions, dilation and curettage); and ensuring that pregnant people have access to what may be the most important technological advance available—medication abortion pills.

Indeed, if access to medication abortion were increased, more people could have very early abortions, in their own homes, by telemedicine, with a provider who need not be a doctor nor even by physically present. Instead, dismissing the latest research and emerging best practices, lawmakers are outlawing telemedicine, mandating that only doctors dispense the medication, and requiring that those doctors be physically present. In Missouri, the health department went so far as to demand that Reproductive Health Services routinely perform a pelvic exam for any patient coming for a medication abortion, a requirement the clinic's chief medical officer, Dr. Colleen McNicholas, has called "unnecessarily invasive" and "unethical." That mandate led the clinic to end its medication abortion program, referring patients to a nearby clinic in Illinois.

Despite the resistance, advocates are pushing to expand self-managed medication abortion, though accessing the pills online or self-administering the pills can pose serious legal risks. Those risks fall disproportionately on those with the least access to abortion care, including people of color, whose behavior is also more likely to be criminalized.

Widdicombe, who also co-founded the National Abortion Federation, understood all too well how the erosion of the right to abortion would threaten people's lives. While after *Webster* she favored some compromise with anti-abortion advocates (for example, on later abortions and parental consent) for which she was widely criticized, she no doubt would have joined forces with advocates today, if she were here, to protect the right she had spent her life fighting for.

As she explained to me back in 1989, "To lose safe and legal abortion would mean incredible devastation for women, children, and families. It would mean reducing women to childbearing vessels again. It would mean turning our backs on the technology we have and refusing to take the responsibility to use it. And the other thing it would say to me is that … we still don't value women as independent human beings."