



The Law and Ethics of Conscientious Refusal

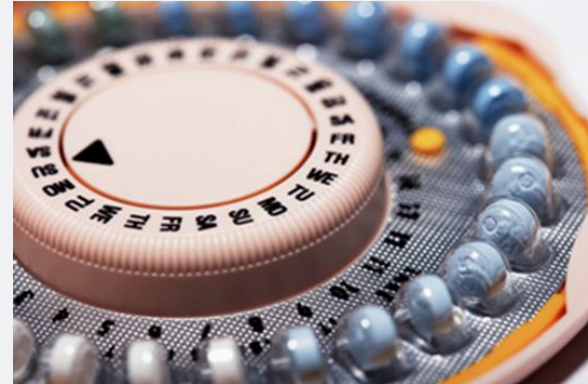
Elizabeth Sepper
Professor, Washington University School of Law
Law and Public Affairs Program, Crane Fellow, Princeton
University

Washington
University Law

Overview



- Defining “conscience” and “conscientious refusal”
- Ethical compromise
- Legal framework for refusal
- Concerns
 - Access to healthcare
 - Over- and under-protection of conscience and religion
- Future issues



"All the News
That's Fit to Print"

The New York Times

LATE CITY EDITION

Weather: Partly sunny, mild today;
fair tonight. Sunny, mild tomorrow.
Temp. range: today 45-59; Monday
35-54. Full U.S. report on Page 74.

VOL. CXXII, No. 42,003

© 1973 The New York Times Company

NEW YORK, TUESDAY, JANUARY 23, 1973

15 CENTS



LYNDON JOHNSON, 60TH PRESIDENT WAS ARCHITECT OF 'GREAT SOCIETY' PROGRAMS

High Court Rules Abortions Legal the First 3 Months

State Bans Ruled Out Until Later

National Guidelines Set by 7-to-2 Vote

By WARREN WEAVER Jr.
Special to The New York Times
WASHINGTON, Jan. 22 — The Supreme Court overruled today all state laws that prohibit, or restrict a woman's right to obtain an abortion during her first three months of pregnancy. The vote was 7 to 2.

In a historic resolution of a

Cardinals Shocked —Reaction Mixed

By LAWRENCE VAN GELDER
Reaction to the Supreme Court decision on abortion fragmented yesterday along predictable lines, as leaders of the Roman Catholic Church assailed the ruling while birth control and women's rights activists praised it.

In the forefront of Catholic reaction were Cardinal Cooke

3.7 MILLION CARS DEALER BY GM

TO CORRECT FLAW Shields Will Be Installed to Prevent Entry of Gravel Into Steering System

By JERRY M. FLINT
Special to The New York Times
DETROIT, Jan. 22 — The General Motors Corporation recalled today 3.7 million 1971 and 1972 cars, its full-size Chevrolet, Pontiac, Buick and

KISSINGER IN PARIS; NATION IS SHOCKED

CHOSEN FOR TALKS Use of Conference Center Indicates Talk With U.S.

By FI
Special to The New York Times
PARIS, Jan. 22 — Henry Kissinger is in Paris and is expected to talk tomorrow with the French President. The U.S. Secretary of State is expected to be moved

NATION IS SHOCKED in Voicing Sorrow and Paying Tribute

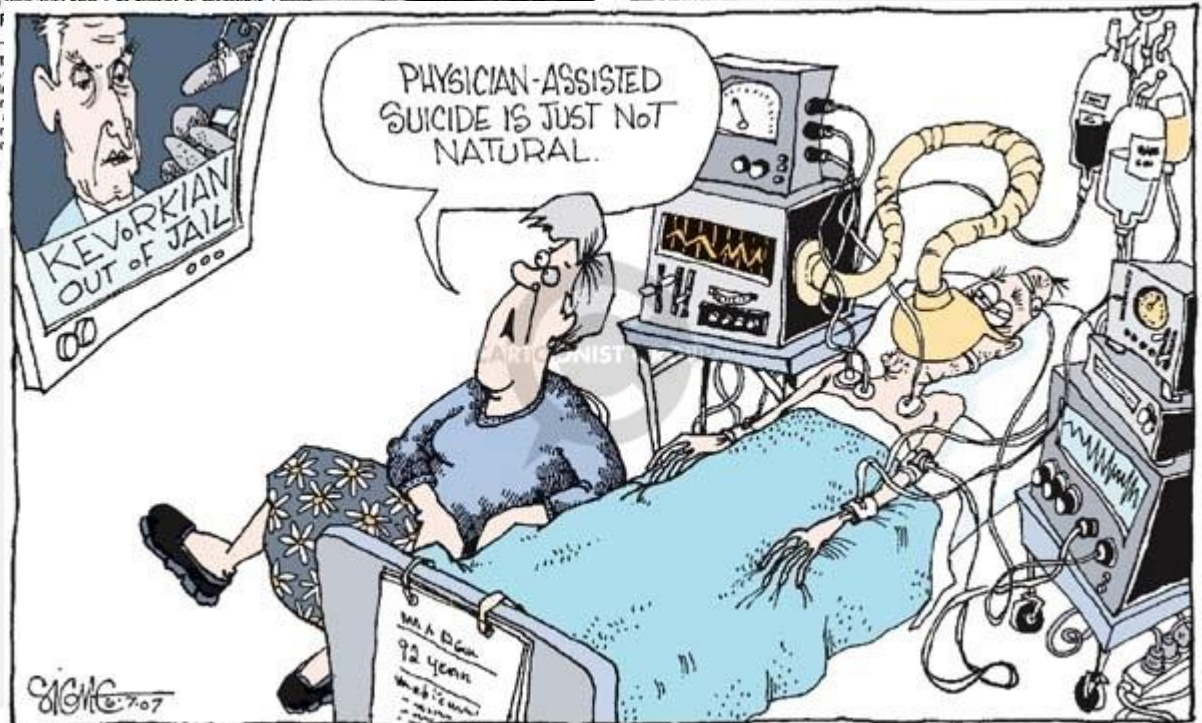
STRICKEN AT Apparent Heart Attack Comes as Country Mourns Truman

By FI
Special to The New York Times
PARIS, Jan. 22 — Henry Kissinger is in Paris and is expected to talk tomorrow with the French President. The U.S. Secretary of State is expected to be moved



STRICKEN AT Apparent Heart Attack Comes as Country Mourns Truman

By FI
Special to The New York Times
PARIS, Jan. 22 — Henry Kissinger is in Paris and is expected to talk tomorrow with the French President. The U.S. Secretary of State is expected to be moved



Professional Organizations & Conscience



American Medical Association Code of Medical Ethics Opinion 1.1.7 provides in part:

[P]hysicians should have considerable latitude to practice in accord with well-considered, deeply held beliefs that are central to their self-identities.

Physicians' freedom to act according to conscience is not unlimited, however. Physicians are expected to provide care in emergencies, honor patients' informed decisions to refuse life-sustaining treatment, and respect basic civil liberties and not discriminate against individuals .

...

The Opinion calls for transparency about services that will not be provided; careful consideration of the decision; respect for duties of informed consent; and, in general, a duty to refer patients to a willing provider.

American Nurses Association Code of Ethics also states that

a nurse is justified in refusing to participate in a particular decision or action that is morally objectionable, so long as it is a conscience-based objection and not one based on personal preference, prejudice, bias, convenience, or arbitrariness.

Nurses are obliged to provide for patient safety, to avoid patient abandonment, and to withdraw only when assured that nursing care is available to the patient. Nurses who decide not to participate on the grounds of conscientious objection must communicate this decision in a timely and appropriate manner, in advance and in time for alternate arrangements to be made for patient care.

Legal Framework re Religion



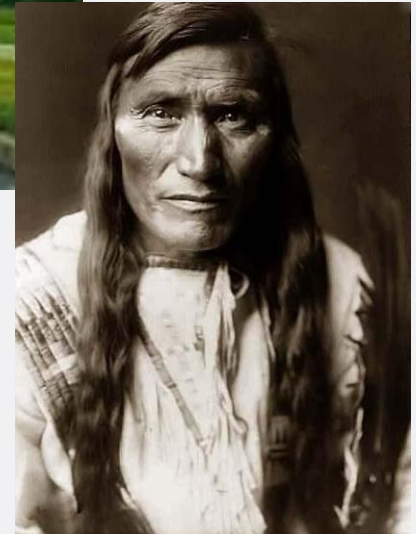
Constitutional provisions

**Statutes entitling religious
believers to seek
exemptions in court**

Statutory exemptions



Statutory exemptions



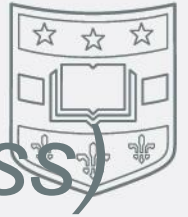
Conscience Clauses



Federal Church Amendment: federal funding will not require an entity to provide any personnel or “make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions.”

State law (New Jersey, e.g.): “The refusal to perform, assist in the performance of, or provide abortion services or sterilization procedures shall not constitute grounds for civil or criminal liability, disciplinary action or discriminatory treatment.”

Texas Health Care Right of Conscience Act (2017 – Failed to Pass)



HB 2878 would permit a health-care provider or institution to refuse to receive, obtain, perform, assist in performing, give advice regarding, suggest, recommend, refer, or participate in a health-care service that is contrary to a person's or entity's conscience.

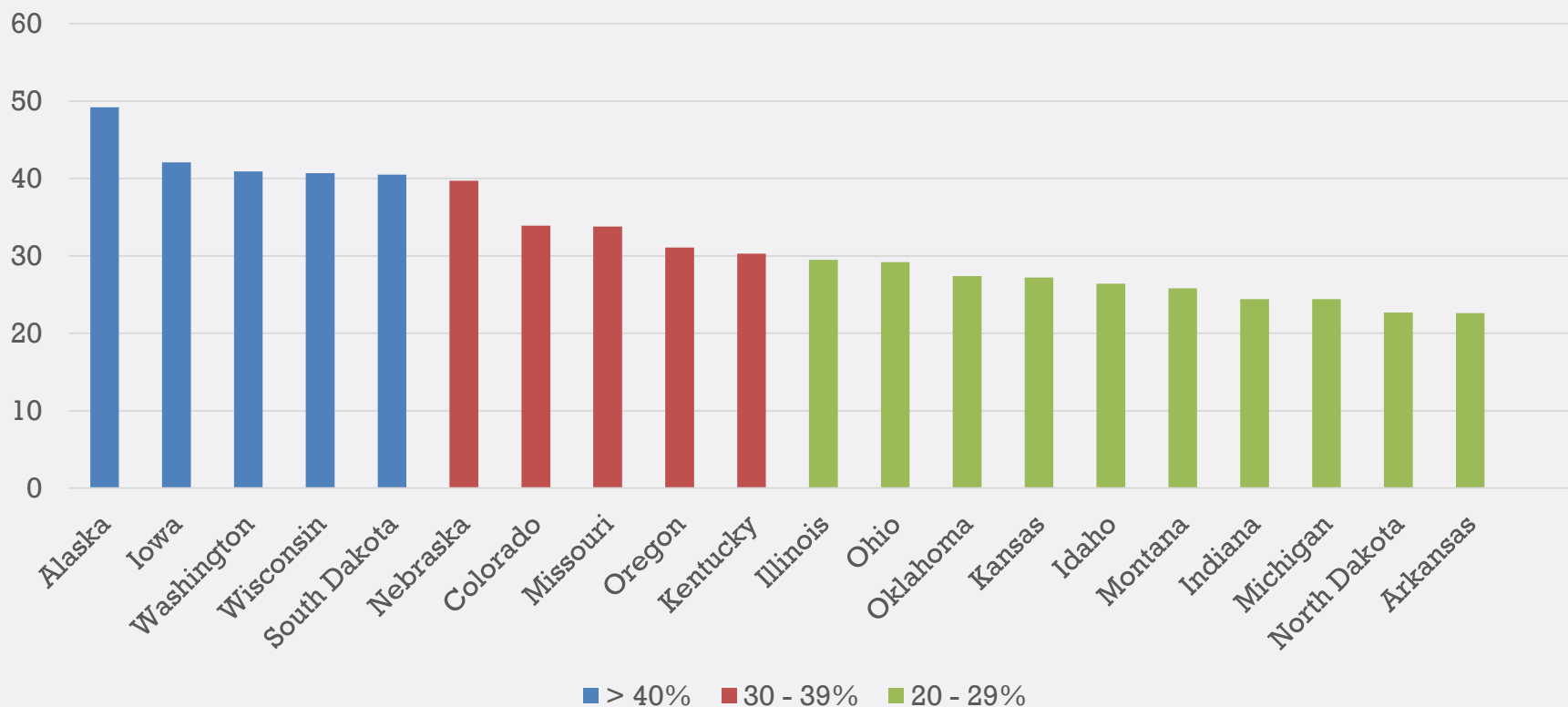
The bill defines health-care service to mean “any phase of medical care or treatment, including:

- testing, diagnosis, prognosis, ancillary research, instruction, medication, and surgery;
- family planning, counseling, and referrals, and any other advice in connection with the use or procurement of contraceptives, sterilization, or abortion; and any other care or treatment rendered by a health-care facility, physician, or health-care provider.”

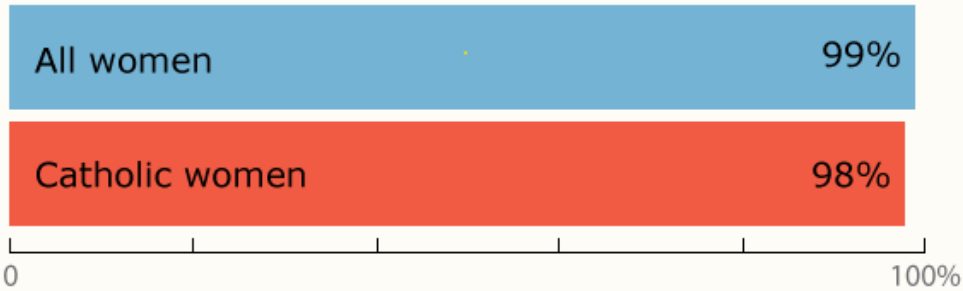
Impact on Patients



Percentage of Acute Care Beds in Catholic Owned or Affiliated Hospitals



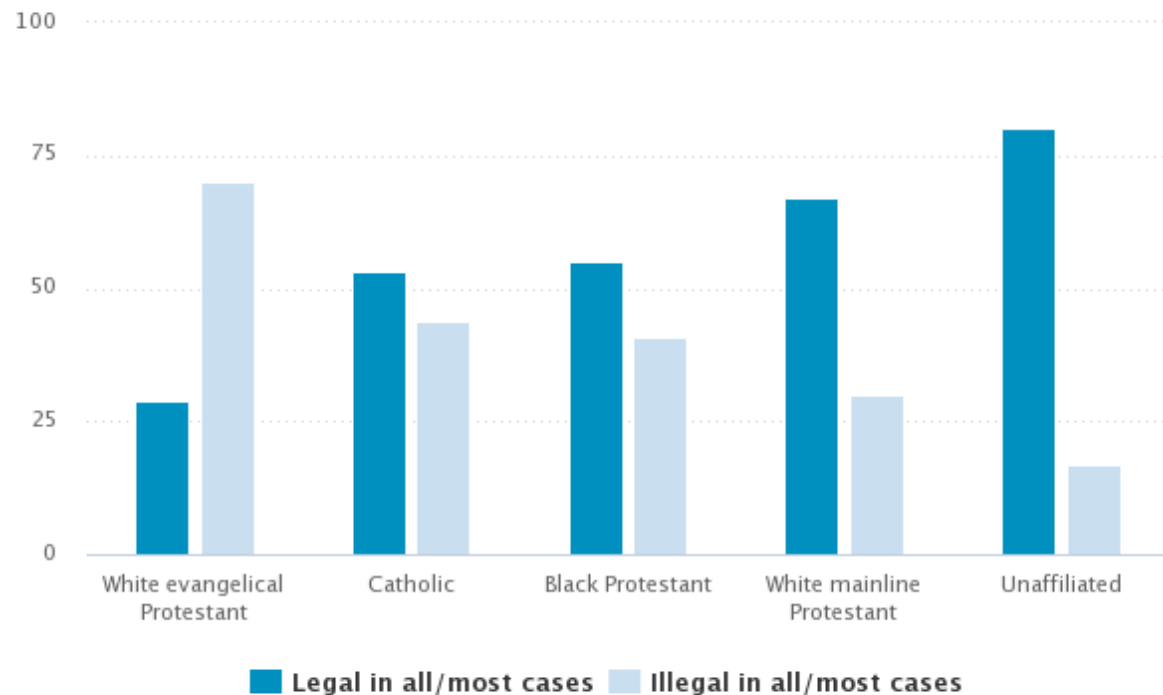
Based on data from MERGERWATCH & MADISON HEALTHCARE ADVISORS, GROWTH OF CATHOLIC HOSPITALS AND HEALTH SYSTEMS: 2016 UPDATE OF THE MISCARRIAGE OF MEDICINE REPORT 8 (2016)



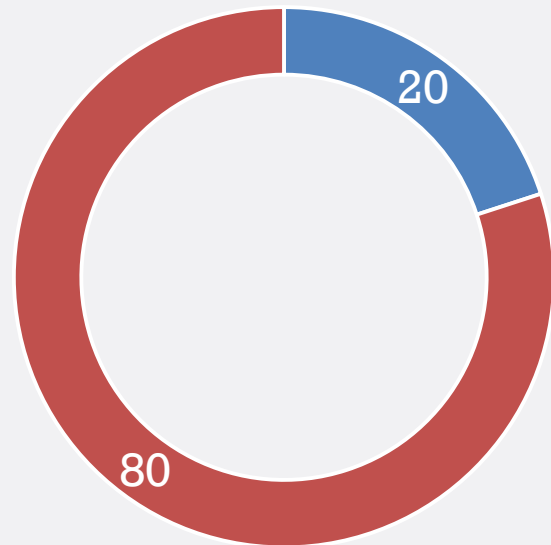
More than 99% of women aged 15–44 who have ever had sexual intercourse have used at least one contraceptive method.



% of U.S. adults who say abortion should be legal/illegal, by religion (2017)

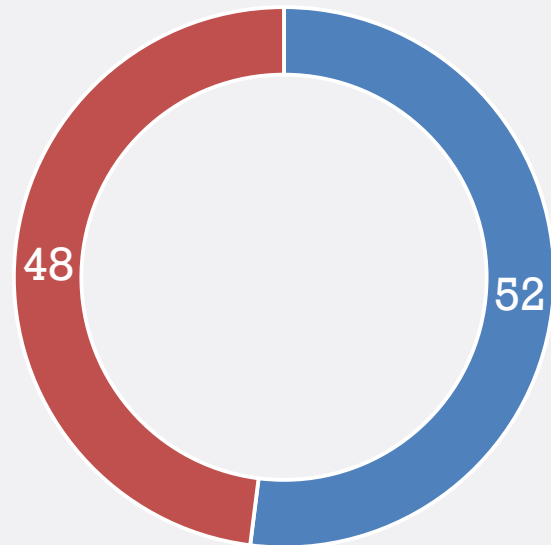


Percentage of physicians practicing at religious hospitals who report conflicts over religion-based policies for patient care



■ Conflict ■ No conflict

Percent of ob-gyns who work in officially designated Catholic hospitals who report conflicts over religion-based policies for patient care



■ Conflict ■ No conflict

Based on data from Debra B. Stulberg et al., *Obstetrician-Gynecologists, Religious Institutions, and Conflicts Regarding Patient Care Policies*, 207 AM. J. OF OBSTETRICS & GYNECOLOGY 73.e1, 73.e4 (2012).

Science and Conscientious Refusal



Antidiscrimination Obligations





Thank you!

Email: esepper@wustl.edu

Twitter: @Isepper

Washington
University Law