A DCI Deliberation Guide

Abortion (Part III):

Should Roe v. Wade be overturned?
What kind of public policy should we have?

Format for Deliberation

Before the Deliberation

I. Read this Deliberation Guide (REQUIRED)
II. Review the sources listed in the footnotes of this document (Optional)

During the Deliberation

I. Setting Expectations – 5 min.
II. Getting to Know Each Other – 10 min.
III. Goals and Criteria for a National Abortion Policy – 10 min.
IV. Building a National Abortion Policy – 80 min.
V. Reflections – 15 min.

Background

In our first session, we discussed whether *Roe v. Wade* and *Planned Parenthood v. Casey* should be overturned and deliberated about the arguments for and against restricting abortion access.We also discussed *Dobbs v. Jackson Women's Health Organization* and whether the U.S. Supreme Court should uphold Mississippi's law restricting abortion. In our second session, we discussed the strongest and weakest arguments for a "National Abortion Act" and the arguments for and against codifying elements of a national abortion policy. In our third and final session, we will weigh various components of abortion policies and attempt to create a policy proposal that we can all agree on.

We will begin this endeavor by discussing controversial components of abortion policies. This guide provides additional background information on these policy components for your reference. Once we discuss the strongest arguments for and against these components, we will then weigh whether each component should be included in a national policy. One objective we might have in this process is to craft a policy that is likely to garner bipartisan support and be supported by people across the political spectrum. While such a policy would likely have

elements in it that all of us might not prefer, we might nevertheless support it because it advances our goals with regard to abortion (e.g., reducing abortions nationally, increasing access to abortions nationally). A policy supported by both Republicans and Democrats would also be less likely to be overturned by a new Congress.

Federal Funding for Abortions

There has been significant disagreement regarding whether taxpayer dollars should be used to fund abortions. Currently, ***the Hyde Amendment prohibits the use of federal funds for abortion***, meaning women on Medicaid in 34 states and the District of Columbia are unable to use this insurance to cover the cost of an abortion (the other 16 states allow Medicaid coverage using state funds).[1] Half the women covered by Medicaid aged 15-49 potentially impacted by the Hyde Amendment are women of color.[2] "Federal employees, military personnel and veterans, people imprisoned or detained by the federal government, Native Americans, Peace Corps volunteers" and others who obtain health insurance through federal programs also may be impacted by the Hyde Amendment.[3] ***Some argue that this causes an undue burden on poor women and women of color, while others assert that federal taxpayer dollars should not be used to fund abortions because so many Americans are opposed to it.***

Timing of Abortions in the United States

Much of the debate surrounding abortion is centered on second and third trimester abortions. According to the Centers for Disease Control and Prevention (CDC), ***abortions are almost always performed during the first trimester of pregnancy***; a small number are performed in the second trimester, and very few are performed in the third trimester.

The CDC reports the following (the data related to the timing of abortions is highlighted in bold):

> In 2019, 629,898 legal induced abortions were reported to CDC from 49 reporting areas. Among 48 reporting areas with data each year during 2010–2019, in 2019, a total of 625,346 abortions were reported, the abortion rate was 11.4 abortions per 1,000 women aged 15–44 years, and the abortion ratio was 195 abortions per 1,000 live births. From 2010 to 2019, the number, rate, and ratio of reported abortions decreased 18%, 21%, and 13%, respectively. However, compared with 2018, in 2019, the total number

[1] "The Hyde Amendment: A Discriminatory Ban on Insurance Coverage of Abortion" Guttmacher Institute
[2] Ibid.
[3] Ibid.

increased 2%, the rate of reported abortions increased by 0.9%, and the abortion ratio increased by 3%.

Similar to previous years, in 2019, women in their twenties accounted for the majority of abortions (56.9%). ***The majority of abortions in 2019 took place early in gestation: 92.7% of abortions were performed at ≤13 weeks' gestation; a smaller number of abortions (6.2%) were performed at 14–20 weeks' gestation, and even fewer (<1.0%) were performed at ≥21 weeks' gestation.*** Early medical abortion is defined as the administration of medications(s) to induce an abortion at ≤9 completed weeks' gestation, consistent with the current Food and Drug Administration labeling for mifepristone (implemented in 2016). In 2019, 42.3% of all abortions were early medical abortions. Use of early medical abortion increased 10% from 2018 to 2019 and 123% from 2010 to 2019.[4]

From 2010-2014, ***approximately 25% of pregnancies ended in abortion globally***; this includes countries with high prevalence of contraceptive use.[5] According to the Guttmacher Institute, "in countries that restrict abortion, the percentage of unintended pregnancies ending in abortion has increased during the past 30 years, from 36% in 1990-1994 to 50% in 2015-2019." The Guttmacher Institute's data also show that between 2015 and 2019 abortion rates were slightly higher in countries where the procedure is broadly legal (41%) than countries where it is restricted (36%-39%). When data from China and India are excluded because their large populations can skew the results, "the abortion rate is actually higher in countries that restrict abortion access than in those that do not."[6]

Mandatory Waiting Periods

Some argue that there should be mandatory waiting periods before a woman can get an abortion, and 27 states require it, including North Carolina.[7] ***Proponents of mandatory waiting periods*** contend that such policies are intended to ensure women seeking an abortion are adequately informed and have time to consider their decisions.[8] ***Opponents of mandatory waiting periods*** argue that such policies place an undue burden on women, particularly those who are poor, as in some states they must make two trips to a provider who may be located many miles away.

[4] "Reproductive Health" CDC
[5] "Abortion Law and Policy around the World" NIH
[6] "Unintended Pregnancy and Abortion Worldwide" Guttmacher Institute
[7] "The Impact of a 72-Hour Waiting Period on Women's Access to Abortion Care at a Hospital-Based Clinic in North Carolina" *North Carolina Medical Journal*
[8] "The Effects of Mandatory Delay Laws on Abortion Patients and Providers" *Family Planning Perspectives*

One research study found that "decision certainty is relatively high and stable over time among those who had had an abortion. Living in a state with a waiting period or two-visit requirement is not associated with increased decision certainty."[9] Other research finds that mandatory waiting periods that require one trip to the provider result in "modest delays in abortion obtainment and small reductions in abortions and increases in births" and policies that "require women to make two in-person visits to a provider have much larger effects on all examined outcomes, increasing second trimester abortions by 19.1%, reducing total abortions by 8.9%, and increasing births by 1.5%."[10] The study also finds disproportionate impacts on women of color and poor women, and concludes that mandatory waiting periods impose a burden on women rather than a cooling off period.[11] Other research points to the increased cost for abortions that mandatory waiting periods cause, as abortion are more expensive to perform later in pregnancies.[12]

Mandatory Counseling

Thirty-four states have laws that require pre-abortion counseling.[13] ***Supporters of mandatory counseling*** for women seeking an abortion argue that such policies allow women to have the information necessary to make an informed decision. ***Opponents of mandatory counseling*** argue that these policies place a burden on women seeking an abortion and delay access to safe abortions.

Research indicates that "pre-abortion counseling scarcely reverses the woman's decision either to terminate a pregnancy or not."[14] Research of Mississippi's law requiring counseling and a waiting period that requires two in-person visits to a clininc for abortions found that "abortion rates fell, the number of women going out of state for an abortion rose and the proportion of second-trimester abortions increased."[15] Research also suggests that policies that allow for mandatory counseling to be delivered virtually or via telehealth "impose relatively little cost on patients, and neither the waiting period requirement nor the mandatory counseling has a

[9] "Abortion Waiting Periods and Decision Certainty among People Seeking Online Abortion Care" *Obstetrics & Gynecology*
[10] "Cooling off or Burdened? The Effects of Mandatory Waiting Periods on Abortions and Births" Institute of Labor Economics
[11] Ibid.
[12] "Mandatory Waiting Periods Can Make Abortions Nearly $1,000 More Expensive" *Market Watch*
[13] "What Happens in Pre-Abortion Counseling?" National Women's Health Network
[14] "Mandatory Pre-Abortion Counseling Is a Barrier to Safe Abortion Services" *The Pan African Medical Journal*
[15] "The Impact of State Mandatory Counseling and Waiting Period Laws on Abortion: A Literature Review" Guttmacher Institute

measurable impact on reproductive outcomes, other than to postpone the timing of some abortions."[16]

Mandatory Ultrasound

Some states require women to view an ultrasound prior to obtaining an abortion. ***Supporters of requiring women to view an ultrasound argue*** that doing so helps a woman to fully understand her decision to terminate a pregnancy, while ***opponents argue*** that this requiring women to view an ultrasound is a cruel, punative policy designed to humiliate women seeking an abortion.[17]

A study of the impact of Wisconsin's law requiring pre-abortion ultrasounds found that the law "caused an increase in viewing rates and a statistically significant but small increase in continuing pregnancy rates. However, the majority of women were certain of their abortion decision and the law did not change their decision. Other factors were more significant in women's decision-making, suggesting evaluations of restrictive laws should take account of the broader social environment."[18]

Minor Consent

Parents are required to be involved in a minor's decision to seek an abortion in 37 states, with various levels of involvement ranging from notification to consent. These requirements generally have some exceptions to them; 36 of these states have an alternative (typically judicial) process that minors may go through to bypass parental involvement; 34 allow a minor to have an abortion in a medical emergency, and 15 permit abortions in the cases of abuse, assault, incest, or neglect.[19] The U.S. Supreme Court has decided that parents may not be given absolute veto power over their child's decision to obtain an abortion.[20]

Supporters of parental consent argue that the doctor and/or hospital could be held liable for malpractice if there are complications with the abortion procedure, and that successful abortions still require follow-up care for which parents should be responsible. Additionally, parents can give their children sound advice and provide mental and emotional support to their chidren before, during, and after an abortion.[21]

Opponents of parental consent assert that annually, more than one million teenaged girls become unintentionally pregnant, with 61% notifying at least one parent; those who do not notify a parent often are domestic violence, sexual abuse, or incest victims and are therefore

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[16] Ibid.
[17] These arguments were presented in a 2009 Florida House of Represenatives floor debate.
[18] "Evaluating the Impact of a Mandatory Pre-Abortion Ultrasound Viewing Law: A Mixed Methods Study" NIH
[19] "Parental Involvement in Minors' Abortion" Guttmacher Institute
[20] Ibid.
[21] "Point-Counterpoint: Parental Consent for Abortions" NPR

unable to garner support from their parents.[22] Requiring parental consent may place minors in an untenable situation.

Maternal Health

Access to safe abortions is a central concern for proponents of women's rights. According to research at the University of Colorado Boulder, "banning abortion nationwide would lead to a 21% increase in the number of pregnancy-related deaths overall and a 33% increase among Black women."[23] The study also reveals that "carrying a pregnancy to term is 33 times riskier than having an abortion, with 0.6 maternal deaths per 100,000 abortions compared to 20.1 maternal deaths per 100,000 live births, according to the Centers for Disease Control."[24]

Additionally, research indicates that "those most likely to seek abortion care, including women of color, poor women and those with chronic or acute health conditions, are also more likely to encounter serious complications during pregnancy."[25] Research projects that if abortion is banned nationally, "an additional 140 women would die annually from pregnancy-related causes, bringing the death toll to 815, a 21% increase. Among non-Hispanic Black women, pregnancy-related deaths would increase by a third."[26]

Supporters of women's right to choose assert that women ought to have safe access to abortions in order to preserve maternal health. They argue that such access reduces complications and mortality rates.[27] ***Opponents of abortion*** contend that even though some women will seek abortions using unsafe means, abortion should not be legal because it is morally wrong. They argue that "there is no such thing as a "safe abortion." One person is killed, and the other is at risk for serious complications, including death. A woman cannot kill her child and remain unharmed."[28]

Fetal Health

Genetics testing may reveal fetal abnormalities that lead women to seek abortions. Research indicates that "women who abort due to a poor prenatal diagnosis are at higher risk of post-traumatic stress and depression than women who continue with pregnancy."[29] Research indicates that 90% of pregnancies in which Down's Syndrome is detected will end in abortion.[30]

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[22] "Point-Counterpoint: Parental Consent for Abortions" NPR
[23] "Study: Banning Abortion Would Boost Maternal Mortality by Double Digits" CU Boulder Today
[24] Ibid.
[25] Ibid.
[26] Ibid.
[27] "Abortion and Maternal Health" NIH
[28] "Women Will Die from Illegal Abortions" Live Action
[29] "Psychological Impact of Abortion Due to Fetal Anomaly: A Review of Published Research" NIH
[30] "Termination of Pregnancy for Fetal Anomaly" British Pregnancy Advisory Service

Opponents of abortion argue that children born with abnormalities such as Down Syndrome can lead helathy, good lives. They assert that children should not be aborted simply because they are "different" or because they may require a lifetime of care from their parents.

Supporters of women's rights argue that women should not be subjected to carrying to term a pregnancy that will result in a severely deformed child or one whose life will be significantly limited by a terminal illness, for example. They argue that requiring women to do so "obscures the emotional anguish and practical difficulties experienced by women who receive a diagnosis of fetal anomaly in an otherwise wanted pregnancy, and who cannot see their way to raising a child with a serious disability."[31]

Setting Expectations (5 min)

In this section, we will review the "Expected Outcomes," Deliberative Dispositions," and "Conversation Agreements" below.

Expected Outcomes of the Conversation

The purpose of this deliberation is to deepen our understanding of various aspects of a national abortion policy in the United States. Over the course of the deliberation, we will have the opportunity to listen to the perspectives of our fellow deliberators and weigh the strengths and weaknesses of components of a national abortion policy. We will attempt to create a policy that we can all agree on and perhaps one that can also garner bipartisan support.

During today's deliberation, we will discuss the possibility of a national abortion policy that both will be equitable to women and take into account concerns about fetuses/unborn children. We will weigh various components and decide whether they should be included in such a policy. By the end of the deliberation, we will have noted areas of both agreement and disagreement related to such a proposal and worked to craft our own policy based on the criteria we believe such a policy ought to contain.

Deliberative Dispositions

The DCI has identified several "deliberative dispositions" as critical to the success of deliberative enterprises. When participants adopt these dispositions, they are much more likely to feel their deliberations are meaningful, respectful, and productive. Several of the Conversation Agreements recommended below directly reflect and reinforce these dispositions, which include a commitment to egalitarianism, open mindedness, empathy, charity, attentiveness, and anticipation, among others. A full list and description of these dispositions is available at https://deliberativecitizenship.org/deliberative-dispositions/.

[31] Ibid.

Conversation Agreements

In entering into this discussion, to the best of our ability, we each agree to:

1. Be authentic and respectful
2. Be an attentive and active listener
3. Be a purposeful and concise speaker
4. Approach fellow deliberators' stories, experiences, and arguments with curiosity, not hostility
5. Assume the best - and not the worst - about the intentions and values of others, and avoid snap judgements
6. Demonstrate intellectual humility, recognizing that no one has all the answers, by asking questions and making space for others to do the same
7. Critique the idea we disagree with, not the person expressing it, and remember to practice empathy
8. Note areas of both agreement and disagreement
9. Respect the confidentiality of the discussion
10. Avoid speaking in absolutes (e.g., "All people think this," or "No educated people hold that view")

Getting to Know Each Other (10 min)

In this section, we will take less than a minute to once again share our names, where we are currently located, and answer one of the questions below.

1. Other than your current profession/career path, what profession interests you the most and why?
2. What is one thing you would change about yourself if you could?

Goals and Criteria for a National Abortion Policy (15 min)

First, let's discuss our goals and criteria that ought to be considered as we evaluate abortion policies. Each of us will have an opportunity to offer an answer to each of the two questions below before we turn to the next one.

1. What should be our goals with regard to abortions in America?
2. What should be our criteria for evaluating abortion policy proposals?

Some possible goals might be to reduce the overall number of unwanted pregnancies and abortions, to ensure women have safe, convenient, and timely access to abortions, to take into

account the personal circumstances of women who are considering an abortion, to provide relevant information and support to the potential parents about abortion and other options (e.g., adoption) that are available, and more.

Beyond these goals that are specific to the abortion context, more general criteria for evaluating proposals might include their political feasibility and likelihood of becoming law; their cost to taxpayers, medical providers, pregnant women, and others; their likely effectiveness (will they achieve their goals); their equity (how fairly do they treat different stakeholders); and their protections of basic civil rights and liberties, among others.

Once everyone has stated their priority goals and criteria, identify the ones that are shared and the ones that are not. Keep both in mind as you continue the discussion.

Building a National Abortion Policy (80 min)

Now, let's try to create a policy that meets as many of these goals and criteria as we can. We will deliberate about the various potential components of such a policy and whether they should be included in such a policy. As we discuss these options, consider whether any of them should be left for the states to decide (and why or why not).

Each of us will answer 1-2 of the questions in each of the sets below. After everyone has a chance to speak, use your remaining time to identify areas of agreement and disagreement on that component (take about 10 minutes per issue). If there is disagreement and one of your goals is developing a policy that has a relatively strong chance of becoming law, then consider which of these components is most important to you and which you are more willing to compromise on.

- Government Funding (10 min)
    - Should government funds be used for abortion services? Why or why not? If so, should there be any restrictions on when government funds can be used?
    - If not, how might the negative effects on poorer women be mitigated?
- Waiting periods (10 min)
    - Should waiting periods be mandatory? Why or why not?
    - If so, how long should the waiting period be?
    - If so, how might the negative consequences be mitigated?
    - If not, how might the benefits of waiting periods be provided through alternative means?
- Mandatory counseling (10 min)

    - Should counseling be mandatory? Why or why not?
    - If so, should counseling be available via telemedicine?
    - If so, should counseling in person be required?
    - If not, how might the benefits of mandatory counseling be provided through alternative means?
- Ultrasounds (10 min)
    - Should a woman be required to view an ultrasound prior to abortion? Why or why not?
    - If so, how might the negative consequences of viewing an ultrasound be mitigated?
    - If not, how might the benefits of viewing an ultrasound be provided through alternative means?
- Parental Involvement (10 min)
    - Should parental involvement be required for minors to receive an abortion? Why or why not?
    - If so, what level of involvement (notification or consent) should be required and what exceptions should be allowed?
    - If so, how might the negative consequences of parental involvement be mitigated?
    - If not, how might the benefits of parental consent be provided through alternative means?
- Trimester of pregnancy (10 min)
    - Should first trimester abortions be allowed in all circumstances? Why or why not?
    - Should second trimester abortions be allowed in all circumstances? Why or why not?
    - Should third trimester abortions be allowed in all circumstances? Why or why not?
    - Should there be exceptions for rape or incest? Why or why not?
- Fetal Health (10 min)
    - Should there be exceptions for rare conditions such as Trisomy 21 (Down syndrome)? Why or why not?
    - Should there be exceptions for Trisomy 18 (Edward syndrome) when survival after birth is rare?[32] Why or why not?
    - Should there be exceptions for Trisomy 13 (Patau syndrome) when survival after birth is uncommon?[33] Why or why not?

[32] "Trisomy Disorders" Better Health Channel
[33] Ibid.

- Maternal Health (10 min)
    - Should there be exceptions when the life of the mother is at risk? Why or why not?
    - Should a woman's mental health be taken into consideration? Why or why not?

After everyone has answered these questions, the group is welcome to take a few minutes for clarifying or follow up questions and responses. Continue exploring the issues as time allows. Once all of the issues have been covered, the group is welcome to revisit any of the issues and decide to change what they would like to include in its policy proposal.

If there is strong disagreement in the group, try to explore the underlying reasons for the disagreement – are they based on different factual interpretations, different value emphases, or different life experiences? Perhaps you can agree on where precisely you disagree, which can be helpful. Alternatively, if there is widespread agreement in the group, try to dig deeper and examine the nuances of the specific elements of this policy – are there particular contexts, for example, where your agreement breaks down? Or perhaps your reasons for supporting or opposing particular components of the policy are different? Exploring this complexity can be helpful as well.

Reflections (15 min)

While today's conversation is an important step in the journey, effectively developing the type of abortion policy we ought to have will take time and commitment. Please reflect on the insights from your discussion with your fellow participants today, and then answer one of the questions below without interruption or crosstalk. After everyone has answered, the group is welcome to continue exploring additional questions as time allows.

1. What was most meaningful or valuable to you during this deliberation?
2. Where are the areas of both agreement and disagreement in your group?
3. Have any new ways to think about this issue occurred to you as we have talked today? Any new ideas that might transcend our current way of conceiving of the problem and its potential solutions?
4. Was there anything that was said or not said that you think should be addressed with the group? Are there any perspectives missing from this conversation that you feel would be important to hear?
5. What did you hear that gives you hope for the future of conversations on issues related to abortion?

6. Is there a next step you would like to take based upon the deliberation you just had?

Publishing a Summary of our Deliberation

The DCI offers single-issue, multi-session D Teams such as yours the opportunity to publish a brief summary of what you discussed over the course of your deliberations. This summary will be drafted by your facilitator or the student participant-observer on your team, and it will describe the expected outcomes of the D Team, the deliberation process you participated in, and both your areas of agreement and disagreement ("The group agreed that…" or "Some Team members thought…, while other Team members believed…"). It may also contain testimonials provided by your D Team members included in the survey circulated after today's deliberation. The draft summary will be circulated to the Team for everyone's input and approval before it is published on the DCI's website; authorship will remain anonymous unless everyone unanimously consents to their names being published. The post will be sent to subscribers to the DCI Blog, and you are welcome to forward the post to policymakers who you think might be interested in reading it.

About This Guide

Writer: Carla Cole **Managing Editor:** Carla Cole **Executive Editor:** Graham Bullock

The Deliberative Citizenship Initiative

The Deliberative Citizenship Initiative (DCI) is dedicated to the creation of opportunities for Davidson students, faculty, staff, alumni, and members of the wider community to productively engage with one another on difficult and contentious issues facing our community and society. The DCI regularly hosts facilitated deliberations on a wide range of topics and organizes training workshops for deliberation facilitators. To learn more about these opportunities, visit www.deliberativecitizenship.org.

DCI Deliberation Guides

The DCI has launched this series of Deliberation Guides as a foundation for such conversations. They provide both important background information on the topics in question and a specific framework for engaging with these topics. The Guides are designed to be informative without being overwhelming and structured without being inflexible. They cover a range of topics and come in a variety of formats but share several common elements, including opportunities to commit to a shared set of Conversation Agreements, learn about diverse perspectives, and reflect together on the conversation and its yield. The DCI encourages conversations based on these guides to be moderated by a trained facilitator. After each conversation, the DCI also suggests that its associated Pathways Guide be distributed to the conversation's participants.

DCI Pathways Guides

For every Deliberation Guide, the DCI has also developed an associated Pathways Guide, which outlines opportunities for action that participants can consider that are related to the covered topic. These Pathways Guides reinforce the DCI's commitment to an action orientation, a key deliberative disposition. While dialogue and deliberation are themselves important contributors to a healthy democracy, they become even more valuable when they lead to individual or collective action on the key issues facing society. Such action can come in a range of forms and should be broadly understood. It might involve developing a better understanding of a topic, connecting with relevant local or national organizations, generating new approaches to an issue, or deciding to support a particular policy.

If you make use of this guide in a deliberation, please provide attribution to the Deliberative Citizenship Initiative and email dci@deliberativecitizenship.org to tell us about your event. To access more of our growing library of Deliberation Guides, Pathways Guides and other resources, visit www.deliberativecitizenship.org/readings-and-resources.