



States' Rights vs. Women's Rights: The Use of the Populist Argumentative Frame in Anti-abortion Rhetoric

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On July 14, 2014 the Senate Judiciary Committee held a hearing on the Women's Health Protection Act (S.1696). This bill centered on women's health care, including access to abortion and contraception, which divided the panel down party lines, with Democrats supporting the bill and Republicans opposing it. The committee hearing involved two panels of legislators, doctors, and advocates who provided testimony on the potential ramifications of the legislation. According to proponents of the bill, such as Senator Tammy Baldwin (D-WI) and Nancy Northrup (President of the Center for Reproductive Rights), the bill represented a positive contribution to expanding women's reproductive rights and access to women's health care. Alternatively, panelists who opposed the bill, such as Representative Diane Black (R-TN), Representative Marsha Blackburn (R-TN), Dr. Monique Chireau (professor of Obstetrics and Gynecology at Duke University), and Carol Tobias (president of the National Right to Life Committee), argued that S.1696 constituted a radical piece of legislation that focused on stripping away all regulations on abortion.

One consistent theme in the rhetoric of the committee members and panelists who opposed the legislation revolved around the question of states' rights and their role in the regulation (or restriction) of abortion. These abortion opponents emphasized the radical scope of the proposed legislation and expressed concern that the bill would gut the rights of states to regulate abortion and, in the opponents' view, protect women. They highlighted the reasonable nature of the existing state-based regulations and the popular support among Americans for those common sense restrictions as the counterpoint to the extremist Women's Health Protection Act. This emphasis on the necessity of states' rights and the importance of common sense state regulations as an alternative to radical federal action effectively redefined the focus of the hearing, turning it into a debate over the proper role of the federal government and thus obscuring the question of women's health.

This article critiques the rhetoric of the antiabortion committee members and panelists during the judiciary hearing, arguing that their invocation of states' rights fundamentally detracts from a substantive discussion of women's health care in the public sphere. The consistent emphasis on states' rights redefined the parameters of the hearing, diverting the audience's attention onto the question of the role of

the states versus the federal government and obfuscated the real question of women's health. Utilizing a populist-style appeal, the abortion opponents emphasized their framing of the proposed legislation as a radical intervention, juxtaposing it to the common sense state-based regulations that are supported by the majority of Americans. Arguments that focused on the scope of the Women's Health Protection Act and the critiques of its title aimed to deflect focus from the question of how to promote safe and affordable access to women's health care services and instead debated the role of the federal government. This article concludes with a discussion of the damaging impact of argumentation that revolves around deflection and diversion in public debates on women's health issues, as these rhetorical strategies functionally mask the fundamental challenges to safe and affordable access to women's health care posed by the current system.

Populist Distractions: A Theoretical Framework

Rhetorical scholars have examined populism as a movement and as a rhetorical strategy in numerous contexts. Populism has evolved over the ages, from the Populist Party in the 1890s up to the modern-day populist appeals in President Barack Obama's speeches. Populist-style arguments have been used by liberals and conservatives and in discussions ranging from economic policy to civil rights. In commenting on the resurgence of conservative populist rhetoric that accompanied the rise of the Tea Party, Michael Kazin argued in an interview that contemporary populism is the same as in the past, defining it as "the language of people who see ordinary people as a noble group and the elite class as self-serving" (Halloran, 2010, para. 4). While others have similarly underlined the centrality of division between opposing forces as a motivating force for populist rhetoric (Erlich, 1977), defining populism solely in terms of a fight between "the people" and elites fails to account for the multiple populist narratives that transcend political party lines and time. This article focuses on the contemporary conservative use of populism, drawing on Michael Lee's (2006) work on the populist argumentative frame as a mechanism for investigating how the rhetorical strategies used by abortion opponents during the Senate hearing shifted the terms of the debate from women's health to states' rights.

Lee (2006) introduced the populist argumentative frame, an argumentation structure built out of four elements that remains stable regardless of the substantive context or speaker. The four elements of the populist argumentative frame are (1) the virtuous or common sense "people," (2) the creation of an enemy, (3) a corrupt or defiled system that must be rejected, and (4) a call for apocalyptic confrontation to rectify past or forthcoming wrongs (Lee, 2006). Within the populist frame, the people are defined by their rhetorically constructed shared values and beliefs, but also by their external referent, the enemy. Populist constructions of the people often revolve around emphasizing the intrinsic goodness of the ordinary hard-working American whose common sense functions as an alternative to the troubled logic of Washington bureaucrats and the political elite. The enemy stands in opposition to the people and their common sense values, and this division underscores the essence of populist rhetoric (Lee, 2006). The third element of the frame, the corruption of the system, creates the impetus for the people to engage in apocalyptic confrontation. The populist frame constructs the division between the people and the enemy in black and white or Manichean terms, depicting the enemy as defilers of the system who must be rejected. Apocalyptic confrontation provides the mechanism to redress the injustice of either the status quo or what the people perceive to be impending crimes. This article utilizes this theoretical structure to accomplish

two goals: (1) analyzing how abortion opponents used the populist argumentative frame as a structure for reframing the parameters of the debate over the Women's Health Protection Act, and (2) examining the negative impact this reframing has on substantive discussions of the merits of the existing abortion regulations and access to reproductive health care generally.

From Women to States: Redefinition through the Populist Argumentative Frame

During the hearing on S.1696, the antiabortion panelists and committee members developed the four elements of the populist argumentative frame as a mechanism for redefining the terms of the debate, shifting the focus to a question of the appropriateness of federal action rather than a discussion of women's health. In this instance, "the people" represent those who support common sense state-based abortion regulations, and the enemy constitutes the proponents of S.1696 and the bill itself, since both attempt to defile the "system," which represents the existing abortion laws and the balance of power between the federal government and states. The abortion opponents called for the people to engage in apocalyptic confrontation by rejecting S.1696 and its supporters and instead supporting alternative legislation or the status quo. In their use of the populist frame, the antiabortion panelists and committee members emphasized three main themes: the common-sense nature of the existing state-based regulations, the radical scope of S.1696, and the degree to which American public opinion supports the status quo. This section will analyze how participants in the hearing constructed the four elements of the populist argumentative frame to mobilize opposition to S.1696.

In populist rhetoric, the people are rhetorically defined both by their internal shared characteristics—the elements that make them a cohesive group—and by their exterior referent, the enemy (Lee, 2006). In the hearing on S.1696, the antiabortion advocates constructed the people, defined by their support for the existing state-based approach to regulating abortion, by emphasizing the majority support for the current regulations and the common sense nature of the existing system.

Antiabortion advocates claimed the mantle of defending the interests of the people by claiming that the majority of Americans support common sense regulations on abortion and thus oppose the radical Women's Health Protection Act. Representative Blackburn established the stark dichotomy between the federal and state approach to regulating abortion and placed the majority opinion on the side of the status quo:

This legislation would jeopardize and nullify hundreds of laws . . . that protect both mothers and their unborn children . . . this legislation sets the dangerous precedent because it would place unconstitutional limits on a state's ability to assure the safety of medical facilities . . . by considering this legislation, many of your constituents perceive that this body is out of touch with the consensus opinion in this country. Public opinion polls show time and again that the American people support limits on abortion.
(*Women's Health Protection Act*, 2014, para. 8)

Blackburn constructs a people who support the existing limits on abortion that the radical proposed legislation would dismantle. Representative Black reinforced this constructed consensus by arguing that

Americans believe abortion must be regulated, as reflected by the fact that "39 states require that abortions be performed by a licensed physician" (ibid., para. 3). Thirty-nine states constitute a strong majority, and her argument implies that these regulations exist only as a result of popular opinion. If the majority of states regulate abortion, and those regulations are supported by public opinion as evidenced by Blackburn's testimony, then to support S.1696 is to oppose the majority of Americans.

Antiabortion advocates link the people to the preservation of the status quo by emphasizing the reasonable nature of the state restrictions. Senator Chuck Grassley (R-IA) described Pennsylvania's counseling requirements and mandatory 24-hour waiting period as "a very common sense law" and argued that Iowans "[took] action on their own to make sure that abortions are done safely" (ibid., para. 14). Senator Ted Cruz (R-TX) echoed this rhetoric, claiming that "a number of the restrictions that this legislation would invalidate are restrictions, common sense restrictions that the vast majority of Americans support" (ibid., para. 7). This emphasis on common sense typifies the populist trope of defining the people as reasonable, down-to-earth, sensible Americans. By associating the status quo state regulations with the common-sense nature of the American public or the "people," the antiabortion advocates normalize the status quo. This rhetoric entrenches the assumption that state regulations are safe and beneficial for women's health issues, a belief that many would contest, as this article will examine later.

Just as the people are defined as supporters of the status quo, abortion adversaries define them in opposition to the enemy—S.1696 and those who support it. Populist rhetoric typically depicts "a vision of the world in Manichean terms" that emphasizes the "distinct division between two forces" (Erlich, 1977, p. 144). The black and white division between the people and the enemy in the populist argumentative frame takes center stage as antiabortion advocates engage in a concerted campaign to label the proposed legislation as unprecedented, radical, and dangerous. One tactic focused on challenging the name of the legislation itself. Representative Blackburn (*Women's Health Protection Act*, 2014) objected to the title "Women's Health Protection Act," claiming that a more accurate title would be "The Removal of Existing Protections and Safety Measures for Women Undergoing Abortion Act." Carol Tobias (ibid.) also proposed an alternate title, the "Abortion Without Limits Until Birth Act," arguing that S.1696 focused solely on "stripping away from elected lawmakers the ability to provide even the most minimal protections for unborn children at any stage in their development" (ibid., para. 3).

In attacking the legislation's title, Tobias and Blackburn simultaneously emphasized the dangerous nature of the bill and implied that its supporters are attempting to deceive the American public. Insinuating that Democratic legislators are lying to constituents in naming the bill the Women's Health Protection Act underscores the radical, devious nature of federal action. In subverting the name of the legislation, antiabortion panelists shift the focus to the radical nature of the proposed legislation, which would supposedly eradicate all limits on abortion. In this view, federal legislators are willing to lie to the American public by using deceptive titles to enact a radical liberal agenda that would eviscerate states' rights. This line of argument reinforces that the people who support the state regulations constitute the real defenders of women's health. Senator Cruz extended this argument by claiming that the legislation is "a very real manifestation of a war on women given the enormous health consequences that unlimited abortion has had, damaging the health and sometimes even the lives of women" (ibid., para. 3). Each of

these arguments reinforces the idea that the people, those who support common sense regulations, represent those who actually care about women's health.

Another facet of constructing S.1696 as the enemy revolves around emphasizing the dramatic scope of the legislation. Tobias painted a vivid picture, describing the bill as a "pro-abortion statutory bulldozer" (ibid., para. 13) that would eliminate any and all regulations that even tangentially affect abortion. Senator Cruz called it "extreme legislation" that was "designed to eliminate reasonable [state] restrictions on abortions" (ibid., para. 2). The language used to describe the bill and its supporters consistently casts them as the logical opposite of the people—the radical extremist to the common sense majority, the dangerous perversion of the system that currently protects the health of women and the unborn. Antiabortion advocates describe the dichotomy between the people and the enemy and between the state regulations and the federal bill in maximal terms to create a forced choice, echoing the populist strategy of depicting issues as fights between the forces of good and evil. The Women's Health Protection Act becomes the radical pro-abortion overhaul that threatens to corrupt the system that the people must protect. Whether or not state laws represent a good approach to regulating abortion becomes irrelevant in the face of such a radically dangerous federal initiative.

For antiabortion advocates, the system represents the current regulatory framework that exists for controlling abortion. In the populist frame, the system represents "the forum in which competition between the 'people' and their enemy occurs" (Lee, 2006, p. 361). Historically, populists argue that the enemy has already corrupted the system, and thus apocalyptic confrontation represents a "vehicle to revolutionary change" (Lee, 2006, p. 362). In this instance, antiabortion advocates and the people must act to prevent the impending perversion to the system posed by S.1696. Senator Grassley concluded his speech to the members of the hearing by condemning the legislation, saying, "this bill will not become law, because the American people will not support it" (*Women's Health Protection Act*, 2014, para. 20). Apocalyptic tropes run heavy through the discourse of antiabortion advocates throughout the hearing, and their form of confrontation requires the rejection of S.1696. Representative Blackburn urged the committee to reconsider the Women's Health Protection Act and instead to consider the Pain-Capable, Unborn Child Protection Act "to be more in line with the consensus of Americans and the states who were making certain that abortion is indeed safe, legal, and rare" (ibid., para. 26). Other hearing participants including Carol Tobias echoed the call to pass the Pain-Capable, Unborn Child Protection Act and to table the Women's Health Protection Act, illustrating the desire to preserve the current system and purify it by enacting legislation to further regulate the use of abortion. In utilizing the populist argumentative frame, antiabortion panelists create a formidable enemy out of the Women's Health Protection Act, shifting attention to questions of federal overreach and limiting debate on how to actually expand women's access to safe and affordable reproductive health care. This reframing of the discussion during the hearing masks the structural inequities that exist in the current state-based regulatory scheme and the obstacles that women face in obtaining safe and affordable abortion and contraception care.

Problematic Populism: Obscuring Women's Rights

Shifting the focus of the hearing from a debate over the best practices for ensuring safe and consistent access to women's health care, such as abortion and contraception, to a discussion of the

proper role of the federal government accomplishes two goals. First, it shifts the discussion into the classic conservative talking point about the dangers of federal overreach and "Big Government." Right-wing populism historically views the federal government skeptically; Big Government, in their view, is made up of Washington elites whose policies of liberal intervention take "hard-earned tax dollars" from ordinary citizens to fund their support of the "undeserving freeloaders" (Langman, 2012, p. 485). Senator Cruz made this link explicit when he cast the bill as an attempt to make abortion universally available, without restriction, and paid for by the ordinary taxpayer. Shifting the terms of the debate to cluster around states' rights allowed the abortion opponents to tap into a powerful conservative trope—opposition to an overly large and intrusive federal government.

Second, by focusing the debate on the role of the states versus the federal government and hyperbolically protesting the allegedly unprecedented scope of the proposed legislation, antiabortion advocates attempt to completely obscure the question of whether or not the states sufficiently protect women's rights. While antiabortion advocates laud the state regulations as protecting the health and safety of women, in reality these regulations are successfully preventing women from accessing the health care services they need and want. Between 2011 and 2013, state governments enacted more than 200 restrictions on abortion, a number higher than all the regulations passed in the previous decade combined (Nash, Gold, Rowan, Rathbun, & Vierboom, 2014). A recent study by the Guttmacher Institute found that more than 50% of women live in a state defined as hostile to abortion (ibid.). Additionally, coercive restrictions, such as 24-hour waiting periods or targeted regulation of abortion providers (TRAP) laws, have dramatically increased the cost of abortions for both the consumer and the provider (Dreweke, 2014). State governments are systematically eroding the constitutionally protected right to abortion granted by *Roe v. Wade*, but the populist appeals of the antiabortion advocates conceal these facts.

The damaging impact of this type of diversionary discourse and the legal system it supports takes center stage in Texas. In November 2013, the Texas legislature passed sweeping new antiabortion regulations, which has sparked a 13% drop in the number of legal abortions, according to a new study by the Texas Policy Evaluation Project (Bassett, 2014). While antiabortion advocates might point to this number as a sign of success, other findings in the study illustrate the detrimental impact these regulations have on women's health care services. Even as the overall number of abortions dropped, the number of second-trimester abortions as a percentage of all abortions increased, indicating that these regulations (such as mandatory waiting periods) are forcing women into waiting later into their pregnancies to receive their care (Bassett, 2014). Representative Black described second-trimester abortions as "the unborn child is literally torn apart limb by limb" (*Women's Health Protection Act*, 2014, para. 23). Representative Blackburn claimed that more than "sixty percent of Americans believe abortion should not be permitted in the second trimester" (ibid., para. 5). Carol Tobias described this procedure as a "second trimester dismemberment procedure" (ibid., para. 9). The Texas regulations included an admitting-privileges rule, which was described by Dr. Chireau (ibid. 2014) as a "standard of care" to ensure women receive proper treatment when getting an abortion. There exists a fundamental tension between a law intended to institute a basic "standard of care" that also results in an increase in procedures described as brutal and dangerous. A law cannot represent a "common sense regulation" if it results in an increase in late-term abortions that the majority of Americans oppose.

In addition to leading to an increase in late-term abortions, Daniel Grossman, a lead author in the Texas study and the president for research at Ibis Reproductive Health, argues that the regulations will force women into “illegal and unsafe methods of self-inducing” (Bassett, 2014, para. 5) abortions. As abortion clinics close and access to care becomes increasingly difficult, women are either forced into motherhood or to back-alley abortions (Dreweke, 2014). The discursive practice of labeling state regulations as “common sense safety regulations” purposely misleads the public. If these regulations are causing an increase in illegal or back-alley abortions, no one can call them reasonable or argue that these regulations were enacted for the safety of women. It calls into question the sincerity of antiabortion advocates’ desire to maintain reasonable safety regulations, because it appears these regulations slowly eviscerate all access to abortion care.

Conclusion

This article examined how antiabortion advocates engage the populist argumentative frame by drawing on the tropes associated with states’ rights as a mechanism for fundamentally altering the terms of the debate over the Women’s Health Protection Act. The digressive debate over S.1696 shifted from a discussion of women’s health care into a debate over the proper role of the federal government, a testament to the power of the populist argumentative frame. Antiabortion advocates engaged in a concerted campaign to demonize S.1696 and its supporters as the enemy of the people, the American public who supports the existing system of common sense state restrictions. By representing the Women’s Health Protection Act as a perversion of the system, bent on rolling back all restrictions on access to abortion, the antiabortion participants in the hearing called on the people to reject this federal intrusion. By hyperbolically illustrating the sweeping scope of the proposed legislation, the focus on states’ rights shifts attention to the classic conservative trope of opposing Big Government.

This article contributes to the current discussion on abortion discourse by interrogating how antiabortion advocates fundamentally obscure the question of women’s health by shifting the debate to a question of federalism. This shift in the debate systematically obscures how state regulations undermine constitutionally guaranteed access to abortion, but it also results in actual physical harm due to women’s subsequent reliance on risky and dangerous procedures, such as self-induced or back-alley abortions. Abortion and contraceptive care represent some of the most politically contentious and polarized issues in American politics. The argumentation strategies utilized by antiabortion advocates during the Senate Judiciary Committee hearing on the Women’s Health Protection Act showcase the ways in which vitally important public policy issues can be distorted into discussions of partisan talking points. Engaging in rhetorical tactics to obscure the fundamental issue of women’s health in these public policy discussions does a grave disservice to the American public.

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