

PP Phoenix
Celebrating Families for Choice
January 23, 2004

It is a pleasure to be here in Phoenix for this celebration of families for choice and the anniversary of *Roe v. Wade*. Let me start with *Roe* and then I'll get to what it means for families.

I need not remind you that *Roe*, or what's left of it hangs by one or two votes in the Supreme Court. *Roe* was largely eviscerated by the *Casey* decision in 1992, which permitted almost any restriction on abortion access unless it constituted an undue burden on the woman.

Pro-life forces, their description for themselves, seized the opportunity and began a legislative assault on abortion access. The pace of legislating appears to be accelerating. In the years between 1996 and 2001, Planned Parenthood reported that 264 pieces of anti-choice legislation had been enacted by state legislatures around the country. By July 2003 NARAL Pro-Choice America reported that the number has risen to 335. I used to think that this was a result of pro-life forces being better organized politically than pro-choice forces are. This may be true, but there is a lot more to the pro-choice political problem than our relative inability to get our supporters to the polls to vote our way. Our problem I believe is with our approach to the issue of choice.

The impetus for my book grew out of a very simple but heretical question. How many more pieces of anti-choice legislation will it take to get the pro-choice movement to rethink its approach to the issue?

While the American public calls itself pro-choice, it acquiesces in and supports an ever increasing number of restrictions on access to abortion. Most Americans favor government regulations that officially discourage abortion and that make abortion difficult to access and available only to adult women who can pay for it on their own in private clinics. In this view abortion should be legal but available only after the woman surmounts some significant obstacles to get one.

I don't call this pro-choice. Being pro-choice to me means being in favor of allowing each person to make up their own mind about whether or not to have a child. It means that a woman should have this power both before and after she is pregnant. She should have the choice in the first instance to become pregnant or not, and, if she is pregnant, she should have the choice not to be, that is to say, to have an abortion and terminate the pregnancy. Being pro-choice means being in favor of contraception and abortion being legal, available and accessible to those who want to use them, no matter what their personal circumstances might be and what decision they want to make. Being pro-choice means that the government has the obligation to insure that all its citizens have access to the health care they need, including birth control and abortion, both of which should be covered by insurance or Medicaid as a matter of public health and

fairness. Being pro-choice means that decisions about childbearing are for the woman to make, not for other people or the government.

We have argued for choice using a combination of women's rights, bodily autonomy, public health and privacy arguments. Why have pro-choice arguments not been persuasive enough to win to our side the nominally pro-choice middle?

I think there are four reasons. First, the arguments based on women's rights and on a woman's right to control her body are addressed primarily to women. These arguments do not directly address the reproductive interests of men.

Second, any argument based on a right to bodily autonomy must recognize that there are exceptions to this rule and that it can not be absolute--- vaccinations, quarantines and body searches at airports being just some examples.

Third, the privacy argument--- that we are entitled to live our lives without unnecessary government interference into our private lives--- runs up against the realities of the modern world where there is less and less privacy---there is no internet privacy, and cameras to deter crime photograph us as we walk down the street in major cities and bans on smoking are the latest invasions of our privacy.

But most importantly the public is not persuaded that the pro-choice arguments we have been making answer the basic moral question of how one can support reproductive choice when one believes that bad choices are being made or that having the choice in itself leads to bad results. It is generally agreed that it is an essential part of being human, and is therefore morally good, that individuals have the choice and the ability to make personal decisions, rightly or wrongly, about how they will lead their lives. The public therefore generally supports individuals having the most liberty and freedom possible to determine the course of their lives. But abortion is seen by many as a choice not worthy of human dignity and freedom because it results in the unnecessary death of an unborn child. In this view abortion could be eliminated if women would only make the unselfish decision to have the baby and either rear it themselves or give it up for adoption. How can one support abortion being legal if you think it facilitates women making seriously bad or immoral choices?

Traditional pro-choice arguments have not provided much guidance either when individuals confront the difficult questions that new reproductive technologies present. Reproductive science---if it were not regulated by law---has developed to the point where genetic engineering and even human cloning are possible. These technologies not only will enable parents to guard against their children inheriting certain genetic diseases, but also may in the future allow parents to select certain genetic qualities that they want in a child. Cloning will permit a child to be conceived by replicating the genes of one person, rather than by mixing the genes of a mother and father.

New technologies are enabling the human race to assert dominion over its evolutionary future. The technologies will allow us to choose the genetic makeup of our

progeny. This in my view is so dangerous that I cannot reconcile it with the absolute right to reproductive choice. Sex selection abortion, as practiced in some Asian cultures, and reproductive cloning are two exercises of reproductive freedom that I do not support. In both these cases the costs outweigh the benefits to humanity by a substantial margin. These technologies present difficult moral questions, whether or not one wishes to use the technologies oneself. Their advent makes it clear that reproduction is a matter for all of society to be concerned about. Personal decisions about reproduction do have public consequences.

So, for me, reproductive freedom is not absolute. I don't believe that any freedom is absolute, except freedom of thought. Every other freedom—speech, religion, what have you--- has limits. The issue then is how do we attain the optimum amount of reproductive freedom, not the maximum amount, but the optimum amount.

I believe that American and worldwide views of abortion will become more pro-choice only when we put abortion in a reproductive and biological context. Women who make the decision to have sex or not, use contraception or not, or have an abortion or not are making biological decisions. In many cases the word “decision” may be too strong a word. Sex may happen without rational forethought. A pregnancy may or may not happen depending on a variety of circumstances. A pregnancy may miscarry, and a live child may or may not be born. Three-quarters of fertilized eggs do not survive to be born. Nature is not fair. Successful reproduction is difficult. This is the fundamental human biological condition. The human use of methods to prevent and time pregnancy and childbirth for the best result are essential components of human biology. In many ways it is a misnomer to say that to do so is a “reproductive right”. It is simply profoundly human. To the extent that the pro-choice movement is trying to advance “reproductive rights”, this book is designed to shift our focus from rights to reproduction. If we can do this, then I believe that we will be talking in terms that every person can relate to.

I believe we should argue for reproductive freedom because it supports successful birth, family and reproduction. We all are here because of the successful reproduction of our ancestors. We all, or most of us, want to repeat the process and have children and grandchildren. Reproductive freedom, including abortion, makes this possible. Reproductive freedom is just as important to those who want to give birth as it is to those who don't want to. We must be on the side of both of these women.

Successful reproduction is a biological necessity. After all, if our ancestors had not reproduced successfully, we wouldn't be here. It is also a complex biological process. Successful reproduction involves a man and a woman, both of who are capable of reproducing, finding each other, bonding, having sex, getting pregnant, giving birth to a living child, nurturing and raising that child, and having that child repeat the same process. The goal of successful reproduction is having a healthy child who will in turn reproduce successfully. Life does not exist without successful reproduction.

. The primary reproductive obligation we parents have is survival---our own and that of our child. A woman's survival depends directly on her ability to control pregnancy and childbearing. Children's survival depends on their condition at birth, their parent's survival, especially their mother's survival, and the nurturing they receive from their parents.

The reproductive process is long, complex and fraught with danger, especially for women. Successful reproduction requires men and women using conscious and unconscious strategies to give them the greatest chance of success. Successful reproduction is not a random event. It is a carefully calibrated system that has evolved through trial and error over the eons to provide for the greatest chance of human survival, i.e. life.

There are costs and benefits in every step of the reproductive process. How we exercise our choices during the reproductive process is a profoundly moral question since it involves the decision to create or destroy life. Moral codes have evolved as humanity has and have enabled us to survive. A proper morality must encourage the survival of humanity. This must include granting men and women the reproductive freedom necessary to insure their own survival and that of their children. This is why not just legal abortion is good; it is why abortion is good.

In the African nation of Mali, one of the poorest nations on earth and where more than 5% of women die of pregnancy-related causes, there is an expression: "A woman who gives birth opens her own coffin". Pregnancy-related complications account for one-third of the deaths for Malian women aged 15-49. In neighboring Guinea one of every seven mothers dies in childbirth and over 10% of infants die before their first birthday. In the United States, the richest nation on earth where relatively few women die of pregnancy related causes, still more than 40% of women experience complications giving birth. Modern medical science has not made the risks of childbearing a relic of the past.

Humanity evolved in conditions even more precarious to women's health than in present day Mali and Guinea. Until the relatively recent advent of antibiotics and modern obstetrical care, a primary cause of premature death for women throughout human history was pregnancy. Even today around the world in about 15% of pregnancies women develop not just complications, but potentially life-threatening complications during the pregnancy itself, in childbirth or in the immediate postpartum period. In 2002 over half a million women died worldwide from childbirth related causes. Complications arise and women die in childbirth for many reasons; it is difficult to predict in advance who will develop complications and who will or will not survive. Unexpected complications can arise in any pregnancy. But some risks can be predicted. There are increased risks, for instance, if a woman's births are spaced too close together, if she is very young or if she has already given birth to four children or more. There are increased risks if a woman is undernourished or anemic or has high blood pressure. Many of these risks can be reduced by proper pre-natal care, by skilled childbirth services and by the woman giving birth at a

facility that can immediately deal with her complications. Many of these risks can also be reduced by the use of family planning to space, delay or prevent births.

Martin Luther was quite callous on the subject of the role and risks of women: “If a woman grows weary and at last dies from childbearing, it matters not. Let her only die from bearing; she is there to do it”.

It is in a woman’s biological interest to take control of her childbearing, to use contraception and to limit the number of children she has. It is also in her children’s interest. Just as there is a risk to the mother in a risky pregnancy, there is increased risk to the baby. Poorly managed pregnancies and deliveries are largely responsible for the deaths of over 4 million newborn babies each year. Insufficient nourishment and poor health care and living conditions account for the death of over an additional 6 million children under the age of 5 every year. These deaths are a biological and moral failure for humanity.

We are here today because each of our ancestors saw to it that at least one of their progeny survived to adulthood in good health and in turn had surviving progeny. As Professor Bobbi Low of the University of Michigan has said, having as many offspring as possible as soon as possible, while it might seem the best strategy is seldom, in fact, a winning strategy even for relatively nonsocial animals.

Professor Russil Durant said: “There are essentially three strategies that individuals can use for reproductive success: (a) Increase the fitness of their offspring by mating with individuals of high genetic quality, (b) increase the fitness of their offspring by enhancing parental investment (by one or both parents), or (c) increase the number of offspring produced. No one strategy is inherently any better than any other, and the pursuit of one strategy usually involves trade-offs with the others... For example, individuals who produce a greater number of offspring (c) tend to have lower fitness of offspring.”

The moral of the story is that, despite what various cultures say, there is no single formula or pathway for reproductive success in life. It all depends on the totality of one’s situation and the environment. Reproductive success comes from taking control and doing the best one can under one’s circumstances. Natural selection favored those women who minimized these risks, survived childbearing and successfully raised their children. The women who did not failed to pass on their genes.

Humans are biological creatures. We are a species of animal, although a very special animal. We have the ability to exercise some control over our behaviors, reproductive and otherwise. We don’t act solely on innate instincts.

Humanity is programmed to have a lot of sex. Sex accelerates human evolution by enabling beneficial traits to become more widespread in the population and by more efficiently reducing harmful traits. In a competitive environment with many parasites,

this is essential for human survival. Humanity is in a co-evolutionary race with pathogens for survival. Sexual reproduction creates the enormous genetic variety in the human population and makes it more difficult for a pathogen to adapt to us and kill us. Sex is more than fun. It is how life survives and propagates itself.

Sexual reproduction is nature's way of giving humanity resistance to pathogens and to insure that the pathogens don't win the arms race.

Sex is part of not only mating and the evolutionary process, but also the social life of the species. Male and female sex roles are not necessarily fixed in stone by biology. Sexual activity is used for more than propagation, says Roughgarden. It is a part of social bonding where individuals gain allies in the fight for survival: "much of the sexual behavior observed in animals is not designed to propagate genes, at least not directly, but to make the protagonist socially acceptable to a powerful clique, thus ensuring him or her access to potential mates and a safe environment." Roughgarden calls this "social selection" for social inclusion, which in turn can lead to reproductive success.

Males and females, because of their different biologies, will tend to analyze their reproductive options differently and will use different strategies to attain their reproductive goals. In other words, the sex differences between males and females will result in different reproductive strategies for males and females.

A reproductive strategy is a compilation of behaviors, conscious and subconscious, instinctual and deliberate, that a male or female will engage in at every stage of the reproductive process so that they will have successful offspring who will in turn successfully reproduce. Everyone has a reproductive strategy. Men and women often pursue strategies that they don't even know are such.

Sexual selection theory says that the biological differences of males and females will lead them to use different criteria in making the decision to reproduce with someone--in the courtship and mating process, in deciding to engage in sexual activity, in having children and in raising them. The members of each sex that are selected by the other sex to reproduce will pass on whatever characteristics they have that the other sex liked to their progeny.

Sex differences between males and females can lead to different mating strategies. Men and women will each pursue both long-term and short-term mating strategies, that is to say, marriages and affairs.

Success is not measured as a couple, it is measured individually for each male and female, when they pass their genes down to the next generation and to the next generation and so on. Reproduction is competitive on many levels because success is so uncertain. Individuals that use efficient strategies produce more offspring for the next generation than their competitors.

If you don't get selected to mate, then your genes die out. Our genes have evolved to survive and not die out, and males and females will fight among each other and compete with each other to be sure that this doesn't happen. The battle of the sexes is real. The battle occurs, and men and women will have different reproductive strategies, before, during and after sex. Our reproductive strategies are both conscious and unconscious. Since reproductive success is uncertain, it is necessarily competitive. The sexual selection process means that one sex will choose mates of the opposite sex based upon whatever characteristics are thought desirable and beneficial. These traits then become under natural selection more common in the population. Each sex competes to choose and be chosen and to control their reproduction. This is the battle of the sexes.

Winning the battle of the sexes for control of reproduction is more important to women than to men because only women bear the health risks of pregnancy and childbearing. Reproductive freedom, the freedom to decide with whom to have a child and under what circumstances, is therefore more important to women than men. Females need more control over the reproductive process than males do in order to be biologically successful. The female need for control begins way before a woman has sex with her mate.

Natural selection favored those women who minimized these risks, survived childbearing and successfully raised their children. The women who did not failed to pass on their genes.

There is always a tradeoff for men and women between current and future reproduction. It takes time, energy and resources for men and women to find a mate, get pregnant, have children and raise them. It takes more energy and has more risks for women. Each step of the reproductive process prevents or delays future reproduction for both the man and woman. The time and energy that men and women put into pregnancy, nursing and parenting which takes away from future reproduction constitute their "parental investment" in the child.

Males can reproduce more readily than females because they don't get pregnant or nurse, a process that can take years. Men can use the time that they would otherwise spend parenting searching for a new mate. This is the biological tradeoff that males weigh in making their parental investment decision. Females thus run a greater risk of being abandoned to bring up their children alone. Men have to balance their chances of finding another mate against the risks to their child if they abandon that child for the quest.

Non-procreative sexual activities flourished in evolutionary terms because they kept parents together to raise their children. The use of birth control became a reproductive strategy to both prevent and aid reproduction. Non-procreative sexual activity and the use of birth control became prevalent like other successful reproductive strategies because they assisted the successful transmission of genes to the next generation. For humanity, the use of controls on fertility including birth control and non-procreative sex, have worked to provide humanity with reproductive success.

Having sex before committing to a potential mate is not risk free. Not only is there risk of violence if the woman rejects the man but the woman puts herself at risk of pregnancy and of contracting a sexually transmitted disease. If the goal of the courtship is eventual marriage or reproduction, then engaging in sexual activity before committing to marriage or before desiring to become pregnant is one test of sexual and emotional compatibility for the couple. Some women may prefer to use a method that allows them the flexibility to decide on their own whether or not to risk becoming pregnant at the time of intercourse.

Beyond these difficulties, women encounter cultural messages about appropriate sex and gender roles that can affect their contraceptive decisions. As a result some women and men engaging in sexual activity before marriage, even though they are in the huge majority that do, nevertheless think they are doing something “wrong” or “immoral”. Culture, therefore, often gets in the way of women especially controlling their reproductive strategy.

The battle of the sexes for control over reproduction continues in bed. While man and women may use sexual activity to determine if their relationship is something that should continue, others use it as a pathway to pregnancy with or without the consent of their partner. Women often find that they are not in complete control over whether or not they get pregnant. Men may demand that their partner not use birth control. Some women will use undetectable contraception in response. Some women will want the flexibility in their method to discontinue it on the spot in order to try to get pregnant without their partner’s knowledge. These considerations can lead to patterns of episodic contraception for some women and to a lack of total control over their reproductive options. For medical, cultural and social reasons, not to mention the cost, time and hassle in getting contraception, women may forego effective contraception, whether or not they are in a relationship. The conscious, effective pursuit of a reproductive strategy can be trumped by one’s culture. An unconscious strategy may result. The result is that the one point in a person’s reproductive strategy where women should be asserting the most control---the time of having sex when they might get pregnant---is often a time when women lack control.

The biological value of becoming pregnant while courting is that it confirms the woman’s fertility, that is to say her ability to become pregnant. It also confirms the man’s. The confirmation of fertility is of major importance for both sexes. Pregnancy during courtship performs the function of forcing the couple to commit to the relationship or not.

The legalization of abortion ended this system. Not that there were not plenty of abortions done before legalization, but the health dangers, financial cost and legal risks were considered too high for many to attempt the procedure. Evidence indicates that legal abortion, which reduced or eliminated these costs, reduced the pressure on the man to commit to marriage. As a result, women were left with the alternatives of having an abortion or having a child as a single mother. But legal abortion gave also freedom to the

woman to decide on her commitment to the relationship without the burden of knowing that her only alternative was to be a single mother or to give up their child for adoption. The availability of abortion eliminates the female's risk of having a child before she is ready to commit to the relationship.

The termination of a pregnancy is biologically counter-intuitive since it ends whatever reproductive success the pregnancy represents. But as we have seen, reproductive success consists of much more than giving birth to a child. The child needs extensive nurturing and care and investment over a long period of time. All throughout the courtship, mating, pregnancy and childrearing, men and women evaluate their prospects for reproductive success. Their view may change as time passes. Especially during pregnancy, there may be changes in the environment, in behavior, in family dynamics, in income or any other circumstance that could affect a parent's view of the future, of their mate and of the desirability of having a child. Men and women may have different views of the future and their future prospects and thus will have different reproductive strategies. Reproductive success, as Professor Bobbi Low reminds us, does not mean having a child every time you are pregnant.

Every pregnancy brings into high relief for the woman not only the prospects for that pregnancy but also her own prospects of reproductive success in this and a future mating. A pregnancy puts a woman in reproductive control. Abortion lets her choose which path her reproductive strategy will follow. She must evaluate not only her own health and condition, economic and otherwise, but also her prospects for the future. She must evaluate whether the father of her prospective child will be a good parent. She may want more children by the same or a different mate. A woman must decide how having a child affects her chances of finding a future mate. If the woman is poor and if there are relatively few men available, she may not see any avenue to a healthier, more prosperous life with another mate and may see having the child alone as her chance for reproductive success. Poverty can cut both ways. In the clinics that I oversaw at Planned Parenthood of New York City, women cited lack of money and lack of support, financial and otherwise, from the father as the main reasons they were seeking abortions. Woman after woman in our clinics would say, "I wouldn't be doing this if he would help me with the child." Men have their own agendas for their lives that often do not coincide with their partner's.

I believe that humanity has reproduced successfully by not leaving reproduction to chance or to nature and by exercising as much control over it as possible. Humans succeed reproductively when they keep one eye on the environment in which they find themselves and when they strategize at every turn to meet their biological goals. Birth control and abortion are nothing more than strategies that humans use to increase their chances of reproductive success, which I defined as having children that will survive in the particular environment and who will in turn reproduce successfully. To be biologically successful and to create viable life that will survive and reproduce, each individual must control all aspects of their reproduction---their mating, their sexual activity, pregnancy, childbearing and parenting.

The role of government, if any, must follow biology. Laws and governments were established in part to assure humanity's biological success. Governments and societal cultures are supposed to make the environment for citizens to have children and to raise them successfully. Laws should be enacted to these ends. The laws passed by the pro-life movement uniformly fail this test as they are a clear detriment to women and men attaining reproductive success as they see it.

We are approaching being able to choose our evolutionary and biological future with new technologies. While choice is a core value of humanity, in the area of human reproduction choice is not the only value; it may not even be in some instances the supreme value. Our challenge is to reconcile human moral agency with the dangers posed by new reproductive choices. We have to ask ourselves the following question: choice for what? Asking this question deliberately puts choice into a moral context. I believe that, given new technologies and the new environment we are in, there is insufficient moral support for giving all women and men unfettered choice about their reproductive futures.

The essential value, as the pro-life movement points out, must be the preservation of life. But I define life to include its propagation, in addition to its existence. Life is nothing without it being propagated. For this we need reproductive freedom. But can we be trusted to exercise our reproductive powers wisely? On the other hand can we trust our governments to restrict our choices wisely? Can we be pro-choice and admit that there should be limits to reproductive choice?

Individual reproductive decisions have cumulative public consequences. As a result, this most private of human endeavors, reproduction, becomes a public matter.

Humanity has demonstrated that it has thrived when each member makes their own reproductive decisions, not when they leave things to chance or nature or when the government, their religion or their culture dictates certain results.

Opponents of birth control and abortion are endeavoring to remove biology and evolution as factors in human behavior. They are trying to establish one set of ground rules for reproduction. They want a pregnancy to be the potential result of each sexual encounter and for each pregnancy to result in the birth of a child, nature permitting. They want all sexual activity and reproduction to occur within marriage. They want men to have more power than they currently do over human reproduction. Opponents of women's control over childbearing believe that they can impose societal and moral rules over biological realities. They believe that strict rules on sexual behavior and restricting reproductive freedom will not hurt, and in fact will help, human reproduction and survival.

Trying to repeal the laws of evolutionary biology is a fool's errand. It is not just wrongheaded; it is dangerous. Abortion opponents cannot repeal the laws of natural selection. These laws favor women who take control over their reproduction. This means

natural selection favors women who use birth control and abortion to plan, space and limit their children so that those children have the best chance of reaching adulthood and in turn reproducing. Natural selection favors children with genetic variety. Natural selection works within a particular environment. Life and the environment can change after a woman is pregnant and it may not be in her reproductive interest to give birth at that time and under those circumstances. Human history has shown that humans make better choices about childbearing, whether made consciously or unconsciously, than governments do. Laws restricting reproductive rights, because they hurt the cause of human life, are not just foolhardy, they are immoral.

The male's basic biological problem is that he has absolutely no assurance (until the advent of DNA testing) that he is the genetic father of the children that his "mate" produces. Natural selection favors men who know who their children are. If a man devotes the time, resources and energy to parent his children, it is more likely that his genes will get passed on. If he unknowingly parents some other man's children, he is helping some other man's genes, not his own, to get passed down. This is the basic problem of paternity uncertainty for males. Men have evolved to have a variety of strategies including trying to prevent other men from having access to their mate or else trying to have sex with a variety of partners in the hopes that he might father some children who might survive without his parenting.

Laws restricting a woman's reproductive freedom by restricting access to birth control and abortion, or by increasing the penalties for women's adultery, are efforts by some men to tilt the playing field so that they will be able to pursue their strategies while not allowing women the same leeway to pursue theirs. How can we get men of every status to support reproductive freedom? I believe only by eliminating paternity uncertainty. Technology in the form of condoms and DNA testing now allows this.

Studies in various cultures worldwide are remarkably consistent and show that about 5-10% (the range is enormous and varies from under 2% to about 30%) of children are not the genetic child of the father listed on the birth certificate. In one respect 5-10% seems like a low figure, but from a male evolutionary perspective it is extraordinarily high. It is a figure that represents evolutionary/genetic death for the non-father at least with respect to that child. It is as if in jumping out of an airplane with a parachute there was a one in ten or one in twenty chance of the chute not opening. In such a case few would take the risk. The downside risk, death, is too great at 5-10%. It is in a male's best evolutionary interest to know who his offspring are and presumably to parent them, if male parenting is needed to get them to adulthood safely. Men's fears of female infidelity are entirely justified.

For the first time in history the new technology of DNA testing enables men to determine conclusively whether or not they are the father of a particular child. The American Association of Blood Banks (AABB) reported about 300,000 paternity tests in accredited labs in the year 2000, with the number increasing every year and the price falling. The AABB reports that in 28% of the cases in 2000 the man tested was not the father.

If men no longer fear infidelity, doesn't the biological foundation for what are viewed in some quarters as patriarchal practices crumble? Males after all have gone to great lengths to restrict female sexuality and to preserve his sole sexual access to her. DNA testing could lead to the elimination of these practices and to reduced male opposition to a woman's reproductive freedom.

Arguments based on choice do not provide sufficient moral underpinnings to support the exercise of individual choices that may result in seriously negative social and biological consequences for humanity, including increases in sexually transmitted diseases, infertility and anti-female gender discrimination. I don't believe that society can permit its citizens to choose their way to biological disaster.

Biological lines can be drawn in order to defend and protect most reproductive freedom. Some uses of reproductive technologies are unwise and biologically counterproductive. A biological analysis will give proponents of reproductive freedom a principled framework with which to defend that freedom. A biological framework can give the pro-choice movement the means to concede that not all exercises of reproductive freedom are wise and perhaps can not be permitted without undermining the moral basis for that freedom.

There is evidence that hormonal contraception alters our criteria for mate selection and, secondly, that it causes changes in sexual behavior which may increase the rate of transmission of sexually transmitted diseases, with the result being an increase in infertility.

Hormonal contraception is not an unmixed blessing--- it may impact optimal mate choice and may lead to changes in sexual activity and contraceptive use that result in an increase in sexually transmitted diseases and infertility. The hormonal contraceptives themselves may lead to an increased infection rate from some sexually transmitted diseases, including HIV. The result of these unintended consequences is direct reproductive harm. The tragedy is that some of the people unable to reproduce successfully suffer these consequences, not because of their own activities, mistakes or misfortunes, but because of someone else's. The people affected by STDs and infertility are not always the ones making poor choices.

The individual choices that women and men make about their contraceptive and sexual behavior can have a collective societal wide impact. Can we permit technologies that simultaneously enable women to control their fertility and yet damage it? Sexually transmitted diseases can spread so rapidly and easily that, like other communicable diseases, they can spread even to those who are taking all reasonable precautions. Since the majority of women wants to get pregnant and have a child and thus must have some unprotected intercourse, every woman is at risk from the past sexual behavior of their partners and of the other men and women that their partners have had sex with. The biological consequences are so severe that saying that these outcomes are fully justified by "choice" is not sufficient because they aren't the choice of the woman affected.

The main problem I have raised is not whether using reproductive technologies has consequences for the individuals using them or for their children but is rather whether the collective use of technology by individuals leads to unintended consequences that harm society's collective reproductive success and human survival. . But the individual childbearing decisions made possible by new technologies are of a different qualitative order because they may directly and unknowingly affect the behavior and health and reproductive success of others.

A theoretical framework arguing for reproductive freedom based on the notion of women's autonomy or of the rights of the individual does not fully answer the question of why society should permit this autonomy or this freedom. Any right that leads to more harm to humanity than benefit cannot long stand. Abortion opponents argue that legal abortion harms humanity by killing its children and by promoting callous behavior and a disrespect for human life in general. I have argued in opposition that reproductive freedom is good for humanity because it promotes human health and survival and that there is no direct evidence that it contributes to callous behavior or to a disrespect for the life of those born.

When any right or freedom harms humanity more than it helps it, then society is justified in curtailing its exercise. No right is absolute. Traditionally, reproductive freedom was based partially on the notion that the decisions made affected only the parents and their family. These decisions were seen as uniquely within the province of individual conscience, much like the decision about whether and how to practice one's religion, and not within the province of the government. We have now seen that some exercises of reproductive freedom can adversely affect everyone in a community. Biological analyses are needed to weigh the pros and cons and to justify these exercises of reproductive freedom.

Individual sexual and reproductive behaviors can have consequences so damaging to the public at large that they threaten the biological, social, economic and political order. For this reason, governments often do not leave sexual and reproductive matters entirely to the discretion of their individual citizens. But governments often pass laws affecting their citizens' sexual and reproductive lives with only a hazy understanding of the actual biological or social consequences of their laws.

I will argue that governments have an interest in seeing to its citizens reproducing successfully because that is one of the main reasons, if not the main reason, governments were established in the first place. There are many governments that do not have specific population goals and who still attempt to regulate their citizens' sexual and reproductive lives for moral reasons. A common morality is important for the functioning of society and to make society conducive for the bearing and raising of children. The definition of what is moral and the determination of how much morality it is necessary to impose to attain these goals are questions whose answers have changed over time. A proper definition of what is moral and necessary for the betterment of society should take into

account the biological effects of any proposed moral rule and the biological necessity for it, if any.

I believe that the most important value to be preserved by society is life, not just the existence of life but also the process by which life is created. Without reproduction life does not exist. Parents are uniquely able to judge the tradeoffs between conceiving and giving birth now versus in the future and to judge their ability to provide for their children. A blanket rule that a pregnant woman must give birth makes no biological sense. It does not necessarily help the woman attain her reproductive goals nor does it help the community. Restrictions on abortion access only make a woman's ability to attain her reproductive goals more difficult.

It is legitimate for government to enforce a moral code to the extent that the code helps its citizens reproduce and flourish. The threat of sexually transmitted diseases and resulting infertility are so serious that government action may be necessary. The threat of infertility is by definition a danger to a citizen's ability to reproduce. The sexual and reproductive practices targeted by many other sexual laws are less of a threat to human reproduction or to society in general. The proscription of the so-called partial birth abortion procedure had no biological justification at all. Its basis in morality was undercut by the fact that the law left in place another abortion procedure that the law's proponents conceded was equally distasteful to them.

The constitutional right to privacy is a bulwark against over-zealous moralists from messing with biology and human evolution. While moral legislation should be permissible, it needs to have a valid reason other than it is thought to be good for society. Without a constitutional right to privacy the government could pass any law it wished relating to human sexuality and reproduction. Humanity cannot let the majority try to redefine the laws of nature by trying to change how and why and with whom we have sex and reproduce. Reproductive freedom has gotten humanity to where it is today. It is essential for our wellbeing and survival that we keep it.

Individual sexual behavior can, for example, cause an increase in sexually transmitted diseases and infertility that makes it more difficult for others in the community to reproduce. Personal sexual behavior thus has public, biological consequences. Since governments have as one of their purposes "to maintain the biologic functioning of group members", they can legitimately try to forestall the adverse effects of sexual practices that impair the biologic functioning and reproductive abilities of the group. Just as war is too important to be left to the generals, there are times when reproduction is too important to be left to the troops. There is a built-in tension in society because reproductive freedom both helps and hurts individual members of society. Individuals have reproductive success when they control their reproduction and when they have the freedom to reproduce as they think most advantageous. For this reason, I believe that it is a legitimate and necessary function of government to provide the family planning, reproductive health care and abortion services that women and men need to control their fertility and childbearing. At the same time, it is the role of government to minimize the negative consequences of individual sexual behavior on the reproductive

environment. This can mean adopting laws that restrict certain individual sexual and reproductive options.

But what in general the criminal law cannot do is prevent men and women from striving to achieve their reproductive goals. The law is just another part of the environment that humanity adapts to in the evolutionary process. If the law does not enable men and women to pursue their reproductive strategies, humanity will find a way around it.

The embryo or unborn child is often called by abortion opponents “innocent”, and they call abortion the taking of innocent life. However, no pregnancy, birth or child is “innocent”. Pregnancy and childbirth each pose grave risks to the mother, and a child needs extensive parental care and investment over a long period of time. A child may be a joy forever, but it is a liability for years. Each child costs time, effort and money. This investment takes away from the care of other children born or to be born and affects their chances of survival. Parents sometimes have to choose between their current and future children in order to best preserve their chances of successfully reproducing. Natural selection does not spare ill or malnourished children, or their mothers, just because they are innocent. If parents don’t make these hard choices, then natural selection will and all might perish. Abortion should be legal because giving parents the ability to control their reproduction helps all of humanity survive.

Laws prohibiting abortion say that every child conceived should be born. Our evolutionary history says otherwise. Women and men who control their childbearing have more reproductive success. This means that sometimes it is in a woman’s reproductive interest not to carry a pregnancy to term if there are health or environmental indicators that say that childbearing should be deferred or stopped entirely. A woman and her partner must take into account their ability given their circumstances to get the child to adulthood safely and in good health so that the child can successfully reproduce. This may mean not permitting the unborn child to be born and having another child at a later date, or it may mean the couple concentrating their reproductive efforts on the children they already have.

Most restrictions on access to abortion do not make biological sense. Waiting periods and other regulations designed to frustrate and delay a woman’s access under the guise of patient safety are no more than a ruse. They only serve to delay the abortion or to make the woman give birth when she does not want to, both of which are contrary to her biological interests. The denial of insurance or Medicaid coverage for an indigent woman’s abortion is similarly misguided and cruel. It forces some women to give birth when they believe it is not in their biological interest. Poor women weather faster than well-to-do women, and pregnancy and childbirth for them carry extra risks. Women in these circumstances especially need to control pregnancy and childbearing as a matter of their own and their children’s survival.

Parental consent for pregnant teens seeking an abortion is similarly designed to force teens to give birth. For some teens early childbearing is an option that can provide

certain biological benefits. But it is for the teen, with in most cases her kin network, to evaluate the risks and decide this. When parental consent laws intervene, it is the teen's parents that can force her to give birth. Parents cannot force their daughter to have an abortion under current law, although if the law were to be consistent, it would allow parents to do this. Parental involvement laws ignore the fact that a minor daughter is not the property of her parents. They also ignore the biological reality that she is the means by which the parent's reproductive strategy is to be carried out. While the teen and her parents might have the same reproductive strategy, they may not or they may have divergent views of childbirth in this particular circumstance. If so, whose reproductive strategy should control: the mother of the unborn child or the grandparents of that child?

When the teen and her parents view the environment differently or view her chances of a reproductive success differently, is it society's function to say that the parent's view shall control? I would argue that it is the person with the greater investment in the child and who bears the health risk, the teenage daughter, whose views should control.

Each individual sees the law as hurting the competitive position of his reproductive competitors, but not hurting his own, because he can break the law with impunity when it suits him. The result is that many people feel that abortion should be legal for "rape, incest and me". The problem is to get people to believe and to advocate for abortion being legal for "rape, incest, me and you". The answer to this problem can come only from citizens attaining a biological awareness that collective reproductive freedom enhances each individual's reproductive success. This is a greater challenge for men than women.

If there was no reproductive freedom, the dominant elites could control who reproduced and who didn't. They could enact eugenic laws. They could force or mandate birth control, sterilization and abortion in cases that suited them. Reproductive freedom levels the reproductive playing field at least as far as the law is concerned. It gives everyone an equal chance under the law to reproduce. It is especially the poor, the unhealthy and the weak who benefit from reproductive freedom. They more than those with better health and more resources need to control their childbearing. Pregnancy and childbirth are much more fraught with danger for those less healthy and well-to-do.

Without reproductive freedom or a right to privacy the government could enact any law it wished on reproductive matters. Social and biological engineering would be permitted with virtually no restraint, except that the law would have to be rationally related to some valid government goal, an admittedly easy test to meet.

Laws regulating reproduction or proscribing certain sexual conduct are attempts by government not only to change human nature, but also to set new ground rules for the exercise of reproductive strategies. Laws prohibiting birth control are an attempt to require that every sexual act should potentially result in a pregnancy, and laws proscribing abortion are an attempt to require that every pregnancy result in the birth of a child. These laws attempt to dictate biological outcomes, and are profoundly wrong. They

say that the government will make better reproductive choices than an individual will. They are an attempt to constrict individual reproductive strategies and choices. This is absurd on its face. Humanity has gotten to where it is by individual reproductive strategies being pursued by individuals free of governmental and societal constraints except in certain biologically harmful cases. Humans have and will make better reproductive decisions than governments will. They make them depending on a multitude of personal and environmental factors. A law saying that these factors are irrelevant is evolutionary idiocy.

Among the nations that Levine and Staiger examined was Romania, which in the 1980's took unprecedented steps to try to increase its anemic birthrate. The Communist regime, led by Nicolae Ceausescu, outlawed both birth control and abortion, but it didn't stop there. In 1986, President Ceausescu declared: "the fetus is the socialist property of the whole society. Giving birth is a patriotic duty.... Those who refuse to have children are deserters, escaping the law of natural continuity".

In an attempt to crack down on its fertility deserters, the government required each employed female to have a monthly gynecological examination to look for telltale signs of either pregnancy, which would be duly registered, or for signs of contraceptive use or of a recent abortion. Women who refused the examination lost their medical, social security and pension benefits. A monthly birth quota was established for each factory, and the factory physician was paid only if the plant's women met the quota. As an added incentive to childbirth, extra taxes were imposed on unmarried men and women over age 25 and on a married couple that was childless after two years of marriage (unless there was a finding of infertility).

As one might expect, the Romanian people did not share their leader's enthusiasm for a higher birthrate and resorted to withdrawal and rhythm (and smuggled contraceptives), as well as illegal abortion to avoid pregnancy. The birth rate quickly doubled, since pregnancy prevention was less effective and not every pregnant woman risked an illegal abortion. But within a few years the birthrate settled back from a pre-criminalization rate of less than 2 children per woman to a marginally higher level of 2.3 children per woman, just above the replacement rate and close to the 10% increase that Levine and Staiger found to be the norm when abortion is banned. The resulting unwanted child was frequently abandoned in a state orphanage, where it often perished under appalling conditions. Maternal mortality doubled and gynecological injuries to women sharply increased, both due to unsafe abortion. It is estimated that a half million women, or 10% of Romanian women of reproductive age, were left sterile as a result of unsafe abortion. Ironically, the government's policies aiming to increase birthrates ended in the involuntary sterilization of the women who were necessary to achieve this goal. After the overthrow of the Communists, Romania lifted its restrictions on access to contraception and abortion, and the birthrate soon resumed its long-term decline. It stands in 2000 at 1.3 children per woman, similar to the rate in the rest of Eastern Europe.

You are supporting the most important organization in this community—Planned Parenthood. I firmly believe that this community can attain none of its other goals unless Planned Parenthood achieves its goals—goals of every child being born to parents ready and able to care for it and nurture it for a long, long time and help it achieve its goals. And its goal of getting every child to adulthood ready to contribute to the community in their own way, healthy, disease free and not a parent until they are ready and want to be. Unless Planned Parenthood achieves these goals, where will this community get the young talent with intellectual ability necessary to keeping innovation growing to better everyone's lives?

This state and Planned Parenthood are alas a long way from attaining these goals.

The child death rate (deaths per 100,000 children ages 1-14) is almost 20% above the national average. Rate of teen deaths rate by accident, homicide, and suicide (deaths per 100,000 teens ages 15-19) is over 25% above the national average. Teen birth rate (births per 1,000 females ages 15-17) is over 50% above the national average. Correspondingly the teen dropout rate is also about double the national average—17% versus 9%.

Teens and children are not faring well in this community. Too many die too young and too many drop out of school.