

## The Debate on Abortion in the Chamber of Deputies in Brazil between 2015 and 2017: Conservative Agenda and Resistance

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**Abstract:** The present article looks at a public debate on abortion in Brazil, based on documentary research into the proceedings that took place in the Chamber of Deputies from 2015 to 2017. I have retrieved speeches and bills from the Chamber's web portal, analyzing Deputies' stands regarding abortion and the types of arguments they employed as the basis for debate. I also examine representatives' profiles in terms of their political party and religion. I found different types of arguments: religious, legal, and scientific or naturalizing. The main topics of debate were the consequences of the Zika outbreak in Brazil and two actions in the Supreme Court: one claiming abortion decriminalization in cases of Zika and the decriminalizing abortions up to the 12<sup>th</sup> week of pregnancy. Religious actors were heavily engaged in these debates in the defense of the right to life, trying to restrict legal abortions.

**Key words :** abortion; Brazilian Chamber of Deputies; Zika; Supreme Court; right to life

### **O debate sobre aborto na Câmara de Deputados no Brasil entre 2015 e 2017: agenda conservadora e resistência**

**Resumo:** O artigo aborda o debate público sobre aborto no Brasil a partir de investigação documental realizada na Câmara de Deputados no Brasil nos anos de 2015 a 2017. Fez-se o levantamento de discursos e de proposições legislativas no portal da Câmara de Deputados. A pesquisa considera as posições acerca do aborto e o tipo de argumentação usada como fundamento. Também se examina o perfil dos deputados quanto a partido político e a pertencimento religioso. Foram identificados argumentos de caráter religioso, legal e científico ou naturalizante nos documentos analisados. Os principais tópicos de debate foram consequências da epidemia de Zika, além de duas ações no Supremo Tribunal Federal pleiteando a descriminalização do aborto, uma em caso de infecção por Zika, outra até a décima segunda semana de gestação. Constata-se o engajamento de atores religiosos, defensores do direito à vida, na restrição ao aborto legal.

**Palavras-chave:** aborto; Câmara dos Deputados; Zika; Supremo Tribunal Federal; direito à vida

### **El Debate sobre el aborto en la Cámara de Diputados en Brasil entre 2015 y 2017: agenda conservadora y resistencia**

**Resumen:** El artículo aborda el debate público sobre el aborto en Brasil a partir de la investigación documental realizada en la Cámara de Diputados en Brasil de 2015 a 2017. Se realizó la encuesta de discursos y propuestas legislativas en el portal de la Cámara de Diputados. La investigación considera las posiciones sobre el aborto y el tipo de argumento utilizado como base. También examina el perfil de los diputados con respecto al partido político y la pertenencia religiosa. Se identificaron argumentos religiosos, legales y científicos o de naturalización en los documentos analizados. Los principales temas de debate fueron las consecuencias de la epidemia de Zika, así como dos acciones en la Corte Suprema Federal que pedían la despenalización del aborto en caso de infección por Zika, otra hasta la duodécima semana de embarazo. Existe la participación de actores religiosos, defensores del derecho a la vida, en la restricción del aborto legal.

**Palabras clave:** aborto; Camara de los Diputados (Brasil); Zika; Supremo Tribunal Federal; derecho a la vida

## The Debate on Abortion in the Chamber of Deputies in Brazil between 2015 and 2017: Conservative Agenda and Resistance<sup>1</sup>

### Introduction

This article analyzes the debate regarding abortion that took place in the Brazilian Chamber of Deputies<sup>2</sup> between 2015 and 2017. It takes as its main material for analysis discourses and legislative proposals drawn from the Chamber of Deputies web portal, looking at lawmakers' positions regarding abortion and the types of arguments used to support these positions. It also examines lawmaker's profiles with respect to their political alliances and religious affiliations. Here, we will review the arguments mobilized around abortion, considering their religious and philosophical, legal, and scientific (biological or naturalizing) foundations in speeches and in bills before Congress. This debate is considered to be a *controversy*: "a moment of expression and redefinition of points and problems, which remain important, sometimes even crucial, in the constitution of a society" (Gimbelli, 2002: 96).

In an article on the anthropological dimensions of abortion, which cites a comparative study covering various societies, Luc Boltanski points out two issues that abortion poses to sociology. The first is in relation to the legitimacy of practice: abortion is disapproved in principle, but often tolerated in reality. The second point concerns abortion's generality and visibility: it is universally known, but at the same time something clandestine in nature, hidden from view even in societies where the practice is legal (2012: 219s). Considering its clandestine character, one wonders how abortion has emerged as a center of controversy in Brazilian society. In Brazil, the Penal Code exempts voluntary abortion from punishment in only two situations: if there is no other way to save the mother's life; and if the pregnancy is the result of rape. In 2012, in the judgment of Fundamental Precept

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<sup>1</sup> I would like to thank the collaboration of FAPERJ and CNPq research assistant Everton Batista Teixeira. This article results from the "Abortion and Sexual Diversity in the Public Debate on Human Rights in Brazil: The Unborn Statute, 'Gender Ideology' and the Gay Cure at the Interface of Nature/Culture, Law and Religion" project, funded by CNPq.

<sup>2</sup> Translator's note: the terms "House of Representatives" and "Chamber of Deputies" are used interchangeably in the present article to refer to the lower house of the Brazilian legislature, and the terms "Representative" and "Deputy" are likewise used to refer to members of this House.

Non-Compliance Action 54 (ADPF 54), the Federal Supreme Court accepted an interpretation that includes abortion in the case of therapeutic anticipation of delivery if a fetus is diagnosed with anencephaly (Luna, 2013).

Machado points to the growth of a neo-conservative wave, from 2005 on, “in reaction to the preparation and presentation by the executive branch, in that year, to draft a legislative bill in favor of legalizing abortion” (2017, html document). Also according to Machado, the draft was prompted by the demand of feminist movements for a review of the punitive legislation regarding abortion – a review approved by the First National Conference on Public Policies for Women in 2004 (2017). In 2005, the Ministry of Health changed the technical norms regarding “Humanizing attention regarding abortion”, dismissing the submission of police reports in order to perform legal abortions in cases of rape (Luna, 2014). Another point stimulating this conservative reaction in the same period concerns the debate on the New Biosafety Law, which allowed the use of human embryos left over from assisted reproduction procedures for the production of stem cells for research and therapy (Luna, 2013). In 2005, the Federal Supreme Court judged a direct action of unconstitutionality (ADI 3510) against this law, protecting research.

In response to all these measures, movements for the defense of the unborn formed, such as “Brazil without Abortion: The National Citizenship Movement for Life”, a group which also seeks to criminalize the use of laboratory embryos conceived through *in vitro* fertilization (Luna, 2013). In these movements’ rhetoric, women’s autonomy and lives are opposed to the right of fetuses to life (Gomes, 2009). The defense of life from conception on (a biological argument) is raised as a banner by these conservative groups, many of whom have religious identity and believe that life is a gift from God (Gomes, 2009; Luna, 2014).

Gomes (2009) identifies the Catholic Church as a central actor in Brazilian society in the struggle against the decriminalization of abortion. The Church has been accompanied since the 1990s by other rising political actors in the public space: the many evangelical churches. Gomes cautions that there is no unity in the position taken by these denominations in these and other struggles. In the case of the Catholic Church, for example, there is – on the one hand – the institutional position issued by the Magisterium and – on the other – the practices of persons belonging to this church (which is hegemonic in Brazil).<sup>3</sup>

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<sup>3</sup> It also shows the engagement of Kardecist spiritist leaders, including the website of the “Brazil without Abortion” movement, *See who we are*. Available at: <https://brasilemaborto.org/quem-somos/>. [Access on 09/01/2019]. However, the number of people who are adepts of this religion in Brazil is small when compared to the Catholic and evangelical churches.

## Methodology

My survey was conducted utilizing the digital portal of the Chamber of Deputies,<sup>4</sup> employing keyword searches in Deputies' speeches and legislative proposals for the years stretching from 2015 to 2017. The searches relied on the following keywords: "abortion" and "unborn child." Sometimes it was necessary to consult the *House of Representatives' Diary* (available online) via the search system in order to follow the proper chronology of a debate or vote. I also consulted the Federal Supreme Court (STF) portal for data on ongoing bills and actions.

The collected material was sorted as either "antiabortion" (when the arguments emphasize the defense of the life of the fetus or embryo and their personhood), or pro-choice (when they focus on the woman's right to continue or terminate pregnancy). Some positions are undefined, such as when abortion is mentioned in reference to another topic, but not discussed. Not all the material recovered will be analyzed in this article,<sup>5</sup> but looking at what was recovered, the hegemonic anti-abortion position of the Brazilian Chamber of Deputies becomes very clear: of the 114 speeches made in the Chamber during this period, 92 were anti-abortion and 12 pro-choice. Likewise, of the 68 legislative proposals, 49 are anti-abortion, 16 are pro-choice, and three are undefined.

The article will be organized by year, highlighting the legislative proposals and the speeches given during that twelve month period. Some topics generated a profusion of speeches. The legislative proposals are articulated according to a different logic and are aimed at changing laws (a bill: PL) or the Constitution (a constitutional draft amendment: PEC), but can also target Congressional activities, such as hearings set by public authorities, information requests from the executive branch, or the activities of state companies (different types of application). These are all different sorts of weapons employed in the public debate surrounding abortion.

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<sup>4</sup> Chamber of Deputies web portal: <http://www2.camara.leg.br/>. Access the "legislative activity" menu, "legislative proposals" option (for bills) and "meetings and speeches" (for speeches).

<sup>5</sup> This proportion has been maintained over the years, varying only in terms of the amount of material found. In 2015, there were 20 speeches, with 66 in 2016 and 28 in 2017. As for the number of bills, 14 were from 2015, 22 from 2016 and 32 from 2017. There is a direct relationship between intensity of the controversy over abortion and the number of speeches and bills made in or set before Congress.

## Highlights from 2015

In 2015, two topics aroused great debate in the House of Representatives regarding abortion: the Senate public hearing on voluntary abortion and the PL 5.069/2013, the bill that imposed further restrictions on legal abortion.

### The reaction of the House to the hearings on abortion in the Senate<sup>6</sup>

The Senate Human Rights Commission organized a public hearing to discuss Popular Initiative Suggestion 15/2014 “which proposes a bill to regulate voluntary abortion through the Unified Health System (SUS) within the first twelve weeks of pregnancy”. This hearing was held at meetings scheduled on different days. At two of these meetings, there were speeches by House Deputies.

In the first speech on 05/28, Pastor Marco Feliciano<sup>7</sup> (PSC-SP: evangelical) commented, regarding the Senate hearing, that “abortion should not be treated as a public health issue but as a matter of conscience”. This is, of course, a philosophical argument regarding the freedom of conscience. To this, he added a religious argument: “in our country, where 88% of people say they believe in a divine entity, we need to let our children live.” In a following speech, delivered on the same day, Feliciano criticized legal arguments in favor of abortion, saying “If you kill a golden lion tamarin, you can be arrested for a crime and held without bail, but nothing happens if a child is eliminated from inside the mother’s womb up to the 12th week of pregnancy”. He then turned to arguments grounded in nature, attacking the view that by the 12th week of pregnancy, the child is not yet “formed”, by questioning is a child is formed at nine months. “Where is his hair? Where are his teeth? His brain is not formed yet.” Feliciano then associated this with another biological argument: “Life has to be protected from conception on” and moved on to yet another “scientific” argument: “The British University has agreed that the trauma caused by the rape causes fewer side effects for women than the trauma caused by an abortion.”

On the 6<sup>th</sup> of August,<sup>8</sup> Marcos Feliciano (PSC-SP) spoke about another session of

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<sup>6</sup> Voluntary abortion was the subject of an interactive hearing of the Human Rights Commission. *Senate News*, 05/05/2015. Available at: <<https://www12.senado.leg.br/noticias/materias/2015/05/04/aborto-voluntario-e-tema-de-audiencia-interativa-da-comissao-de-direitos-humanos>>. [Accessed on 11/19/2018].

<sup>7</sup> The first mention of a given parliamentarian’s name in the article will also note their religion. I use the names adopted by the parliamentarians on the Chamber of Deputies.

<sup>8</sup> Hearing on legal abortion until the 12th week of pregnancy 06/08 in the Senate Commis-

the Senate public hearings, holding in his hands a “life-sized representation of a fetus; an 12-week-old child,” which he said, “has its internal organs formed.” Here, he labeled the fetus in the 12th week of gestation as a “child”, and decried “pseudointelectuais public health advocates” who defended the legality of abortion up to that stage of pregnancy.

In a speech given on the 7<sup>th</sup> of August, Representative Flavinho (PSB-SP: Catholic Charismatic Renewal (RCC)) registered his presence in the Senate public hearings, stating that “the Brazilian people are against abortion. The vast majority of this House is against abortion and we will not bow down to a noisy, noisy minority that wants to shove the issue of abortion down the throats of our country.”

### The Cunha Bill creates obstacles to legal abortion

The other event reflected in 2015’s speeches was the debate over PL 5069/2013, proposed by Eduardo Cunha (PMDB – RJ, evangelical) with a substitution bill written by Evandro Gussi (PV SP, Catholic of the RCC ). This bill restricts legal abortions by penalizing “announcing a process, substance, or object intended to cause abortion”. The substitute bill penalizes the instigation or aiding of abortion, which makes emergency contraception difficult, and requires women aborting due to rape to identify the perpetrator to the police and prove sexual violence.

There were expressions of support and rejection of the Cunha Bill. On the 28<sup>th</sup> of October, Ronaldo Nogueira (PTB/RS, evangelical pastor) called abortion an “abhorrent practice that happens when adults, who have the proper knowledge of good and evil, propose, often according to self-interest or vanity, to take the life of an innocent when it is still in the womb”. On the same day, Edmilson Rodrigues (PSOL-PA) spoke out against the Bill in a speech that denounced both violence against women and the Bill itself as an “attempt to drastically restrict the Unified Health System in attending to women who are victims of sexual violence in our country”. Rodrigues called the Bill “cruel and inhuman “ and described sexism in the House as representatives of “the macho culture ingrained in our society, which is basically an idea of superiority and power over women, and which is directly related to the violence that we are dealing with. Right here in this House, unfortunately, we have already witnessed some demonstrations along these lines”.

On the 4<sup>th</sup> of November, Maria do Rosário (PT – RS ) spoke about the growth

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sion Human Rights. Cf: Abortion divides opinions in debate in the Commission on Human Rights. *Senate News*, 08/06/2015. Available at: <<https://www12.senado.leg.br/noticias/materias/2015/08/06/aborto-divide-opinioes-em-debate-na-comissao-de-human-rights> >. [Accessed on 11/19/2018 ].

of the feminist struggle in the streets in response to Bill, claiming solidarity with women who participating in the “movement against Bill No. 5069, 2013, which attacks the rights of women who are victims of rape”.

On the same day, Áureo (SD-RJ, evangelical) presented a different position, claiming to “clarify to society that this is not a case of pragmatic conservatives versus women’s rights advocates.” In Áureo’s opinion, the “Bill rightly wants to protect the right lives of both the unborn and women.” He defended the mandatory police report and the forensic examination required by the Bill as “restraining offenders” who will be aware that rapes will “be investigated and, in the end, punished.” Áureo declared that “a life is formed from conception on. It is not a pile of cells” accusing pro-choice groups of wanting to “make the legalization of abortion a form of birth control”. Regarding assistance procedures, the Deputy said that “The state can and should provide access to contraceptive methods, and train and inform in their use. But can the state induce a person to take a life?” He also accused of fraud the young people who seek in SUS “services for termination of pregnancy” in order “to repair [the effects] of a consented act.” According to Áureo, the Cunha Bill sought to uphold women’s rights in terms of prenatal care, childbirth, childcare, and schools for children “and not prevent children from being born because the state does not protect them.” He continued by saying that “standing for life by saying no to legalizing abortion [...] will not remove any rights of women, but will in fact give greater value to women”. Áureo then concluded by enumerating the social rights in the Constitution and qualifying abortion as “the most horrendous and despicable of crimes.”

Edmilson Rodrigues (PSOL/PA) spoke once again against the Bill on November 11<sup>th</sup>, commenting on the “Women’s Spring” movement then mobilizing several Brazilian cities “against the conservative offensive in society and in the National Congress”. According to the Deputy, the Cunha Bill “makes it difficult to care for rape victims in the country”. Rodrigues called it “cruel and inhuman” and described it as “institutional violence that denies the right to dignity to the Brazilian people, especially women.” He concluded by saying that “the cry of Brazilian society is for justice and for more social rights”.

Deputy Ivan Valente (PSOL-SP) made the last speech about the Bill on the 17<sup>th</sup> of December, claiming that it

Shames women who are the victims of sexual violence, acting according to a perverse logic of blaming the victim, making it difficult to report crimes, which in practice facilitates rape. In addition, it removes the guaranteed rights of women who are victims of sexual violence and criminalizes those who give information about abortion or any procedure that may be considered abortive, including all procedures within legal norms.

Reactions to PL 5 069/2013 were also made in the form of legislative proposals created by leftist (and one centerist – PTB) Congressmen. House Request 58/2015 (REQ 58/2015), authored by Erika Kokay (PT-DF), Maria do Rosário (PT-RS) and Cristiane Brazil (PTB-RJ) (all without any identified religion) required a public hearing in the Constitution and Justice Committee in order to debate the Cunha Bill. According to the authors of the request, the Cunha Bill “restricts SUS care for victims of sexual violence, forcing them to register a crime report and subject themselves to police examination before being accepted in health care facilities”; it only “considers sexual violence cases that result in physical and psychological harm,” contrary to the current legislation; it removes from “health care such preventive treatments as the morning after pill and the provision of information to victims about their legal rights and all health services.”

Jandira Feghalli (PCdoB-RJ) filed request 3055/2015 (REQ 3055/2015), proposing the revision of PL 5.069/2013. Given that the Bill was “related to a matter of public health” and amended Law 12,845 of 2013 (regarding compulsory and comprehensive care in cases of sexual violence), Feghalli’s revision request claimed that the Bill should be reviewed by the Committee on Social Security and the Family.

## Legislative Proposals in 2015

Regarding bills in 2015, we highlight two that had related goals.

PL 1089/2015, submitted by Joshua Bengtson (PTB/PA: evangelical) aims to ensure “freedom of religion, expression, and conscience”. The bill’s author denounced a “clear attempt on the part of a minority of Brazilian society to silence the opinions issued by religious leaders, possibly criminalizing speeches they deliver regarding sexuality, abortion, euthanasia, and prostitution, among other topics.”<sup>9</sup>

PL 1411/2015, by Rogério Marinho (PSDB-RN: evangelical), criminalizes all forms of ideological harassment; that is to say “any practice that conditions students to adopt particular political, partisan, or ideological positions, or any embarrassment caused by others to students who adopt different positions, regardless of who is the agent”. The Bill’s justification section talks about forms of totalitarianism that attempt to “turn the heads of children and youth”, and it extracts examples of harassment from the thesis books of the Workers’ Party’s 5<sup>th</sup> Congress, including “the law regarding the legalization of abortion [and] the law criminal-

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<sup>9</sup> One should compare this to a bill whose justification refers to sexual diversity, proposed two years later: PL 8150/2017, authored by Rep. Victório Galli (PSC-MT), which penalizes any form discrimination or prejudice against Christian beliefs in Brazil.

izing homophobia”. According to the Bill’s author, the discussion of these issues is part of a program of ideological conditioning that is “totally disregards and affronts the rights of students to form their own convictions from personal experience based on the education provided by the family and the religion they adopt.”

These two bills are correlated, as the first is intended to ensure the freedom of public expression of religious leaders on issues related to personal morality while the second wants to prevent freedom of discussion in the classroom about these moral issues, given that this would constitute “ideological conditioning” by presenting values for debate advocated by the students’ family.

## Highlights from 2016

Many representatives’ speeches this year were about or related to the outbreak of Zika virus in Brazil and the Supreme Court ruling regarding it. There was also the debate over the House’s proposal to include unborn children as subjects, and the judgement of a Habeas Corpus ruling in front of the Supreme Court, decriminalizing abortions before the 12th week of pregnancy. This was the year that saw the most speeches regarding the topics covered by the present article.

## Abortion and the Zika epidemic

Many speeches and legislative proposals were focused on congenital syndromes (such as microcephaly) which could be provoked by the Zika virus and many of these speeches were in reaction to the Proposal of Unconstitutionality #5581 (ADI)<sup>10</sup>, which was before the Supreme Court and which claimed that infected pregnant women had a right to legal abortion. At the center of the debate were accusations of eugenic abortion.

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<sup>10</sup> ADI 5581 was filed by the National Association of Public Defenders (Anadep) on 08/24/2016, as recorded on the Federal Supreme Court portal. In addition to pleading that the articles of the penal code relating to abortion should not imposed in cases of proven infection with Zika (arguing a woman’s right to terminate the pregnancy because of the psychological torture and the helplessness imposed on women by pregnancy during an epidemic whose consequences to their health and the health of their future child are still unknown), the action argued for: continuing benefits the affected families, with immediate suspension of the family income criterion of a  $\frac{1}{4}$  *per capita* minimum wage; the creation of prevention education campaigns; the taking of necessary measures in the context of the Zika epidemic, such as offering rehabilitation in centers no more than 50km distant from the domicile of the affected person; training health professionals; making exams widely available; and offering long term, reversable contraception options.

In February and March, I found nine speeches linking abortion and congenital syndromes to the Zika virus. On 02/04, Flavinho (PSB/SP) divulged a letter from the National Confederation of Bishops of Brazil (CNBB) regarding the fight against the *Aedes Aegypti* mosquito and explaining the Bishops' anti-abortion position. Congressman Flavinho openly associated abortion with eugenics in this case. On 02/17, Anderson Ferreira (PR-PE: evangelical) took up his bill, PL 4396/2016, which increases the legal penalties in cases of abortion due to microcephaly and fetal anomalies. According to the speeches made by Flavinho (02/04) and Anderson Ferreira (02/17), authorizing abortion in these cases would be an opening for relaxing restrictions in other cases. On 02/18, Mandetta (DEM-MS) talked about what he called "the UN's unfortunate statement, demanding the easing of abortion [legislation] in Brazil due to the Zika outbreak and the [resulting cases of] microcephaly", stating that eugenic abortions are not provided for by law. The Congressman added that, in cases of possible contamination by Zika, diagnosis is only undertaken after the 25th or 26th week of pregnancy, thus characterizing abortion "as the murder of a fetus; a fetocide". On 02/18, Ronaldo Fonseca (PROS-DF) made a speech about the Zika epidemic, accusing a group of activists of wanting "to kill children in the womb at any cost" and warning that the National Congress was on guard against any attempts to take the case to the Supreme Court.

In a speech made on 02/24, Marco Feliciano (PSC-SP) denounced the Women on Web NGO of promoting a "campaign" to send abortion pills to pregnant women contaminated by Zika. On 03/02, Daniel Coelho (PSDB-PE) presented an open letter from the Spiritist Life Institute, expressing opposition to abortion and alarm regarding cases of microcephaly. On 03/09, Evangelical Congressman Stefano Aguiar (PSB-MG) observed rising pressures for legalizing abortion in case of contamination with Zika and expressed his opposition to this as a "servant of God". The deputy claimed that abortion "Violates [...] the divine commandment contained in Mosaic Law [and that] abortion in no way differs from homicide, since it is [the killing of] a human being, even if it is during its primary phase of formation". Aguiar also expressed the view that one should not underestimate religious doctrine in the name of State secularism, because all civilizational concepts derive from religious doctrine. On 03/16 Gilberto Nascimento (PSC-SP: evangelical) denounced the growing number of abortion clinics in Brazil: "The so-called 'fashionable virus' cannot be used to indiscriminately justify the counterculture of abortion [...], which is a sin for us who are Christians."

The only speech in favor of legalization of abortion that took place in February and March in the context of the Zika controversy was made by Congressman Ivan Valente (PSOL-SP) on 03/08, while addressing International Women's Day.

Valente claimed, given that the country was in the throws of a Zika outbreak, that it was necessary to stop thinking about the religious aspects of abortion and concentrate on public health: “Abortions due to Zika are another example, in that they are illegal, penalizing the poorer classes with the price of life”.

Flavinho (PSB/SP) took up the subject once again in a speech on 09/20, commenting on a news item published in the *Folha de S. Paulo* on 08/24/2016: “On Wednesday (24), the National Association of Public Defenders filed suit with the Supreme Court, asking that pregnant women affected by the Zika virus who are in ‘great mental suffering’ have right to abortion”. Flavinho claimed that the Anis Institute was behind this proposal, said Institute being chaired Professor Deborah Diniz (UnB), “a great pro-abortion activist.”

On 11/30, Diego Garcia (PHS / PR: CCR Catholic), took up the subject. He reported having appealed to the Committee for the Defense of the Rights of Persons with Deficiencies to challenging the “direct action of unconstitutionality made by the National Association of Public Defenders, which seeks the legalization of abortion in cases of pregnant women who have contracted the Zika virus, arguing that the baby would be born with a disability”. Rosinha da Adefal (PTdoB-AL: evangelical ) spoke 12/01 about mobilizing against the Public Defenders’ action.

### The unborn as a subject?

Another highlight of the 2016 debates was the discussions surrounding draft resolution n° 8, 2007 (PRC 08/2007), which proposed changing the bylaws of the House of Representatives in order to create between a standing Commission on Women’s Rights, the Elderly, Children and Adolescents, Youths, and Minorities, a proposal that was voted on 04/26 Representatives discussed whether to include the term “unborn” in the Commission’s title and that of various other committees, such as the Women’s Commission. According to Erika Kokay (PT/DF), the Women’s Commission was charged to “include the term ‘unborn child’ in the social security issue, without any discussion, putting rights to life into conflict.”<sup>11</sup> The introduction of the term “unborn” would be a “*jabuti*”<sup>12</sup> interfering with

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<sup>11</sup> Cf. Journal of the House of Representatives, Thursday, 28<sup>th</sup> of April, 2016, p. 607.

<sup>12</sup> In the Brazilian legislative process, *jabuti* designates the insertion of a rule unrelated to a bill’s main theme or to a provisional measure sent to the Legislature by the Executive. This term arose by analogy with the popular saying that “jabutis don’t not climb trees”, used to describe events that do not occur in the natural course of things. Source: < <https://www.conjur.com.br/2013-out-09/camara-deputados-rejeita-proposta-acabar-exam-ordem> >. [ Accessed on 02/14/2018 ].

the duties of the Commission on Human Rights and the Commission on Social Security and Family, as noted by Deputy Jandira Feghalli (PCdoB/RJ).<sup>13</sup> Among the parliamentarians who spoke up regarding this vote on 04/27, 15 stand out, of which eight were for exclusion of the term and seven for its inclusion. Of those in favor of inclusion, all were men, while of the eight who were opposed, four were women. Only Gorete Pereira (PR-EC: Catholic) agreed with the vote to suppress without expressing any judgment of values; that is, without defining a position as to the condition of the unborn child.

Henrique Fontana (PT-RS) voted to block, without further commenting on the issue, because he said the House was being presided over by a corrupt politician (Eduardo Cunha)<sup>14</sup>. The other seven blocking votes were made by congressmen with clearly pro-choice positions. Ivan Valente (PSOL/SP) accused fundamentalists of wanting to make choices for everyone. Glauber Braga (PSOL-RJ) denounced the disrespect for women's rights and the attempt to criminalize them. Similar to Valente, Braga accused the group of "wanting to determine the rights of Brazilian society as a whole". Afonso Motta (PDT-RS) considered it "extravagant to refer to the term 'unborn'", questioning of the condition of this entity as a subject. Erik Kokay gave two speeches. The first addressed women's invisibility. The second tackled the legal aspects, arguing that the Civil Code refers to the term "unborn child" in the expectation of it someday being a subject of rights; rights that are confirmed when the child is born alive. She saliented the need to talk about women's lives in this debate:

There is no protection today for the unborn child, but there is protection for the family, for motherhood, for pregnancy. We cannot subject this Parliament, the State, or our legislation to religious conceptions, these must be respected, but they cannot come into conflict with the secularism of the State, because otherwise rights will be eliminated.

Here we can see the argument of the secular state being raised. Jô Moraes (PCdoB-MG) pointed out the hypocrisy of a group of men united with the aim of eliminating women's rights who spoke on behalf of women and claimed to defend their lives. As for the legal aspects of the question, the Congressman claimed that the term "unborn child" is not included in the Brazilian Civil or Criminal Codes,

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<sup>13</sup> Cf. Journal of the Chamber of Deputies, Thursday, 28<sup>th</sup> of April 2016, p. 633.

<sup>14</sup> The vote came just days after the House approved the opening of the impeachment process against President Dilma Rousseff (17. 04).

and that the desire being expressed by those who use the term is to return Brazil to the 1940s. Meanwhile, Cristiane Brazil (PTB-RJ) said that PL 5069 /2015 (see above) hindered the access of rape victims to the day after pill and to their ability of getting rid of undesired pregnancies. According to this Congresswoman, including the term “unborn” would be simply another attempt to undermine women’s rights by political segments who women do not feel represented by.

Among those who voted for maintaining the term “unborn child” were those who said they were defending the rights of women and their lives, such as Catholic (RCC) Representative Eros Biondini (PROS/MG). Carlos Manato (SD-ES: Catholic) claimed that not including the term would be to take a stand in favor of abortion. Evangelical pastor Alan Rick (PRB-AC) claimed that defending women’s rights was a way to promote abortion. Givaldo Carimbão (PHS-AL: Catholic (RCC)) situated himself as being against “gender ideology” and in defense of the unborn child. Pastor Eurico (PHS-PE: evangelical) defended himself against charges of religious fundamentalism by saying Brazil is a Christian country, while claiming that his opponents were “half a dozen abortionists.” Flavinho (PSB-SP) affirmed that to speak of unborn children is to speak of women, because half of the children that are aborted are women. He also declared that there were no religious overtones in this discussion. Evandro Gussi (PV-SP) spoke twice. He first claimed that the unborn child is a person and all of its potential. He also claimed that the unborn already have eye color, hair color, a temperament and that all the genetics of the person is completely determined from the first cell on. This was the most clearly biological argument made by the anti-abortion group. In his second speech, Gussi said that “reproductive rights” was a “euphemism for abortion, which is rejected by Brazilian society”.

On 04/28, the day after this vote, Deputy Pastor Eurico (PHS-PE) made an anti-abortion speech and claimed to protect women, while complaining about those who mock evangelicals:

We religious evangelicals are [...] mocked, called religious fundamentalists. They regard us as a backwards because they say we are not protecting women. We are, however, protecting women, because if we did not protect them and we were in favor of abortion, certainly many women [...] would not have even been born.

The result of the vote was the amendment of the bylaws, which represented the recognition of the status of subject of fetuses and embryos, without considering pregnant woman as subjects.

## The Supreme Court: Abortion during the first trimester is not a crime

The direct unconstitutionality petition that would decriminalize abortion for pregnant women infected with Zika was taken up again at the end of the year during yet another controversy generated by the Supreme Court, judging a Habeas Corpus decision regarding an employee of an abortion clinic. The first group of justices decided by a majority that the termination of pregnancy through the third month of pregnancy could not be equated abortion.<sup>15</sup> Several representatives manifested against this decision on 11/29 and 30 and 12/01. On 11/29, Edmar Arruda (PSD-PR: evangelical), claimed that the Supreme Court had liberated the murder of children in their mothers' wombs for up to 90 days and said he did not agree with this decision: "We who are Christians defend the family; we stand for life". On 11/29, Flavinho (PSB-SP) made a speech claiming that the 80% of the Brazilian population who are against abortion and in favor of life must be respected, and accused the Supreme Court of trying to legislate.

Lelo Coimbra (PMDB-ES) spoke on the 29th of November, stating that it is not up to the Supreme Court Justices to define medical or natural concepts. A second problem that the decision created, according to Coimbra, is that it didn't specify the reasons leading to the abortion, leaving a loophole, since the law allows abortion in cases of rape and anencephaly. Marcos Rogerio (DEM-RO: evangelical) also made a speech on 11/29, comparing "tragedy" of the plane crash that killed the team members of the Chapecoense Football Club with the Supreme Court's decision to "license" the "killing of innocent children". Evandro Gussi, also speaking on 11/29, highlighted the two cases in which abortion is excluded from punishment. According to Gussi, "A woman can dispose [...] of her own body, but she cannot cause the death of another person who has another genetic makeup." He also affirmed that once elected, Congress cannot be replaced.

Alan Rick (PRB-AC) made two speeches. On 11/29 he asked "If you can kill a three-month-old baby [...] in his mother's belly... [w]hy not kill him [...] in his crib?" He then went on to say "The Constitution is being torn up," and that the defense of life in Brazil had been set back. Rick then encouraged Congress to quickly vote on the Unborn Statute. Luiz Carlos Hauly (PMDB-PR: Catholic) also made two speeches on 11/29, labeling the Supreme Court's decision "murder" and the invasion of the prerogatives of the Brazilian legislature. Fabio Sousa (PSDB-GO: evangelical) also took to the podium twice, first on 11/29, saying that he would

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<sup>15</sup> Grillo, Breno. "Interromper gestação até 3º mês não é crime, decide 1ª Turma do STF em HC." *Legal Adviser*, 11/29/2016. Available at: < <https://www.conjur.com.br/2016-nov-29/interromper-gestacao-mes-nao-aborto-turma-stf> >. [ Accessed on 06/30/2018 ].

join with most of the Congressmen, who are pro-life and unborn. Sousa refuted the statement “it’s my body and I can do whatever I want with it”, claiming that what’s inside a woman’s womb is not hers. He claimed that women must be respected, but that the lives that are being generated within their uteruses must also be respected.

Fabio Sousa (PSDB-GO) spoke again on 11/30, referring to Article 5 of the Constitution – “The right to life is inviolable” – and also the Universal Declaration of Human Rights, of which Brazil is a signatory. According to Souza, every human being has the right to life, and this “pregnancy” on. In his second speech on 11/30, Carlos Hauly (PMDB-PR) said it was necessary to convene a meeting with President of the Republic, the Supreme Court, the Senate and the Attorney General in order to maintain harmony between the powers due to the Supreme Court’s decision which he characterized as overreach. Hauly and Pastor Eurico (PHS-PE) also congratulated Deputy Chamber President Rodrigo Maia (RJ-DEM) for creating a commission to discuss abortion. Pastor Eurico (PHS-PE) claimed that the decision on abortion was moved by a “Herodian spirit” of “killing of children”. The congressman also claimed to respect women and the possibilities already provided by the law. Eurico declared that, in addition to earthly justice, there was divine justice: “woe betide those who make decisions that cause harm of this nature, especially an affront to life, which is what was the decision of the Supreme Court is”.

On 11/30 Evangelical Congresswoman Geovania de Sá (PSDB-SC) claimed to repudiate the Supreme Court’s decision to decriminalize abortion, as a mother and a wife, saying that it would authorize the murder of the defenseless. Jefferson Campos (PSD-SP: evangelical) spoke out on 11/30 against the Supreme Court’s decision: he would put together the commission that will analyze the Unborn Statute, defending life from conception on. Also on 11/30, Joaquim Passarinho (PSD-PA: Catholic) asked why one could take a life at three months, replying that one cannot because life is sacred. On the same day, Evangelical Congressman Roberto Alves (PRB-SP) stated that, as a member of Congress, he swore to “uphold, defend, and abide by the Constitution”. He also declared that it was the greatest role of Brazil’s congressmen to defend life and that nothing gives someone the right to eliminate life. He argued that the decision of the Supreme Court violates the independence of the three Powers and joined Congressman Rodrigo Maia in creating a commission to discuss abortion. Keiko Ota (PSB-SP) spoke on 11/30, citing a personal story that convinced he to become pro-life: when she lost her son, her family was devastated and doctors denied her any hope of being a mother again. She prayed for “the tormentors” of her son, however, and was given her daughter Ises.

Also on 11/30, João Campos (PRB-GO) read a statement from the Evangelical Parliamentary Front in protest against the Supreme Court’s decision:

The practice of abortion up to the third month does not characterize crime. HC 124306 had as its object only the revocation of preventive detention of people who worked in a clandestine abortion clinic, but the [...] First Class of the Supreme Court, using activism that is dangerous to Democracy and the State of Law, went beyond this and ignored Art. 5º, caput, of the Brazilian Constitution, which guarantees [...] the inviolability of the right to life.

Campos criticized the dangerous activism of the Supreme Court that ignored the right to life, provided for by the Constitution and which, according to him, is the greatest of all rights. He then asked Christians to pray on the case.

Marcos Feliciano (PSC-SP) spoke twice, on 11/30 and 12/01. On the first occasion, he stated that the rejection of attempts to decriminalize abortion shows the position of the majority of the Brazilian Christian population in favor of life. He displayed the representation of a life-size three-month old fetus and said it was already a life. He countered the argument used by Supreme Court that unwanted pregnancy violates women's rights, claiming that the Constitution guarantees the inviolability of life. He also called on animal protection institutions to preserve the "rational animal, homo sapiens" instead of spending their time protecting turtle eggs. He based his position on the Civil Code which:

Protects the rights of every human person with its 1<sup>st</sup> Article and specifies that the civil person begins at birth with life. But the law safeguards the rights of the unborn child from conception on. In addition, criminal law punishes the practice of abortion with prison, except as provided by law in order to protect the mother's life and in cases of rape. Recently, cases of anencephaly were also included.

According to Feliciano, the Court's decision would banalize the murder of children and other small creatures. He objected that when people talked about gender equality, they never mentioned that the father should also have the right to decide "the birth of a baby that carries his seed." Feliciano mentioned that he himself is an abortion survivor that said that his mother ran a clandestine abortion clinic. In his second speech, on 12/01, Feliciano repeated several of his earlier arguments and described the Supreme Court's decision as made by three people and going against the will of 513 (the number of deputies in the Chamber of Representatives). He asked God to enlighten the authorities to restrict themselves to consensual issues and leave the creatures of God in peace.

In his speech on 12/01, Diego Garcia read the CNBB note defending life from conception on. He emphasized that the decision of Court claims that "the fetus, until the third month [...] has no life, is not a human being". He asked to show an audio exam of his wife, with the heartbeat of their unborn child. In his second speech on

the same day, Alan Rick said that Brazil has animal protection laws and asked where were the laws to protect life? He also said that Brazil has a Supreme Court to give an opinion on abortion in Zika virus cases and a First Class of the Supreme Court which understands that the practice of abortion up to the first three months of pregnancy is not a crime. He claimed that abortion in the case of Zika infection was eugenics.

Franklin Lima (PP-MG: evangelical), spoke on 12/01, congratulating Rodrigo Maia for inviting the Supreme Court to attend a Commission of the Chamber of Deputies “in order to understand this process of liberating abortion.” Jones Martins (PMDB-RS) also spoke on 12/01, reinforcing Rodrigo Maia’s position on defending the need for a House Commission to address abortion. He stressed that the debate must take place in the House and that neither the judiciary or any other body could take power away from the legislature. He stated that the majority of Brazilian society is against abortion and defends life. Marcelo Aguiar, evangelical, joined several Congressmen on Dec. 1 in congratulating Rodrigo Maia for setting up a commission to address abortion. According to Aguiar, doctors have been placed in preventive detention due to clandestine abortions and these people “irresponsibly” harvested human lives. He ended by reiterating the need to fight for abortion to continue to be criminalized in Brazil.

Roberto De Lucena (PV-SP: evangelical) warned on 12/01 that the Court’s decision set a dangerous precedent for future decisions and also congratulated Rodrigo Maia’s attitude. Also on 12/01, Sostenes Cavalcante (DEM-RJ: evangelical) recalled that deputies and senators are given power to legislate by popular vote and that this is their legitimate function. He claimed that his commitment to the state that elected him is to fight for the protection of life from conception on. Victor Valim (PMDB-CE: Catholic (RCC)), on the same day, criticized the Court for playing at being demigods by saying that there is no life during the first three months of pregnancy.

On 12/01 Severino Ninho (PSB-PE: Christian) described as absurd the Court’s decision regarding the abortion of healthy babies up until the third month of pregnancy, reminding listeners that this was not in the Penal Code. Although a Christian, he agreed with abortion in the case of rape. He noted that the Supreme Court has already created another possibility for abortion in anencephaly cases and had gone too far. Kaio Maniçoba (PMDB-PE: Catholic) also spoke on 12/01 about the fact that recent exceptional court decisions (authorizing abortion) should not be trivialized. He said that there are mothers who already feel their children with a month or two months of gestation. Erika Kokay (PT-DF) was the only one to defend the Court’s position on 12/01, citing that there were an estimated one million clandestine abortions in Brazil every year and noting that criminalization puts the women so implicated outside of any public policy.

On 08/16, Jean Wyllys (PSOL/RJ) spoke about the libertarian wave of democracy in western countries that has legalized abortion in most of them, while in Brazil the Statute of the Unborn was being discussed.

### Legislative Proposals in 2016<sup>16</sup>

The legislative proposals created in 2016 can be divided into five groups: social control projects, tributes to pro-life people or movements, health actions to prevent spontaneous abortion and to guarantee medical leave for women who have aborted, projects for the protection of unborn children; requirements for information regarding deaths from abortion and to hold public hearings on abortion and on the sale of abortifacient products over the internet.

The social control projects were all created by Rep. Flavinho (PSB-SP). These included PL 4642/2016, creating the National Program for Prevention and Awareness of the Risks and Consequences of Abortion; PL 6395/2016, which amends the law on alcohol advertising to include warning of the harmful effects of alcohol consumption for pregnant women; PL 4641/2016, encouraging the voluntary delivery of babies for adoption by women who are victims of sexual violence or are socially vulnerable; and PL 4640/2016, amending Law 8069/1990 (the Statute of the Child and Adolescent) to assure women the right to choose the surrogate family of the babies they put up for adoption and creating a national awareness campaign regarding the voluntary delivery of babies for adoption. Finally, Flavinho proposed REQ 143/2016, requiring a public hearing to discuss the sale and delivery in Brazil of abortifacient products through the internet.

Mobilizations also took place to discredit abortion as a social problem. A request was made to the Minister of Health for information from Datasus on the death of women due to abortion in Brazil, via Information Request RIC 2500/2016, authored by Diego Garcia (PHS-PR). In the same vein, REQ 22/2016 CDHM, authored by Sóstenes Cavalcante (DEM-RJ), required the holding of a public hearing within the Commission on Human Rights and Minorities to discuss abortion issues in Brazil.

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<sup>16</sup> Due to the limits of the present article, only those most focused on the ongoing debates during the period will be described. The following topics during the 2016 and 2017 were cut from this article: tributes to pro-life people and movements; bills with health actions; bills with provisions for the rights and protection of the unborn child; and (only in 2017) bills regarding the humanization of childbirth. My previous work also shows a tendency in past legislatures to recognize the unborn child as a subject of rights (Luna, 2014).

More anti-abortion activism included a group of requirements that focused on the Zika virus epidemic, which tried to curb attempts to authorize abortion in cases of infection. REQ 3935/2016 by Flavinho (PSB-SP) required the approval of a motion to repudiate the action of the United Nations (UN) Human Rights organ for breach of democratic principles and for offending the individual freedoms of Brazilian citizens to the right to life and health. This requirement denounced the UN's request to "liberate abortion in cases of babies suspected of having microcephaly due to Zika virus infection". REQ 409/2016 CSSF to the Social and Family Security Commission, authored by Flavinho (PSB-SP), called for a public hearing to discuss the possibility of abortion in cases of pregnant women infected with Zika virus. REQ 78/2016 CPD to the Commission for the Defense of People with Disabilities, authored by Diego Garcia (PHS-PR), called for a public hearing to discuss aspects related to microcephaly and the Zika virus outbreak in Brazil, and public policies related to this problem.

Two pro-choice initiatives were also registered during this period. REQ 5509/2016 was a motion to repudiate institutional violence and the criminalization of activists for publicly positioning themselves in favor of decriminalizing abortion<sup>17</sup>. INC 2627/2016 sought to expand legal abortion services in the SUS.<sup>18</sup>

### Highlights from 2017

The topics that caused the most debate regarding abortion in the Chamber of Deputies in 2017 were ADPF 442 (a proposal to legalize abortion, associated with a position request by the Supreme Court), and the vote on PEC 181/2015, which would add the expression "from conception" to the article of the Constitution that refers to the inviolability of the right to life.

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<sup>17</sup> Request written by Ana Perugini (PT-SP) for approval of a motion for the repudiation of institutional violence, the re-victimization of women, and the criminalization of activists and the organizations fighting for gender justice and equality, including such feminist groups as the Feminist Center for Studies and Counseling (CFEMEA) and Catholics for the Right to Decide, two groups persecuted for taking a public stands in favor of abortion decriminalization.

<sup>18</sup> Statement by Mr Rômulo Gouveia (PSD-PB), who suggests expanding pregnancy termination services within the Unified Health System in cases provided for by law.

## ADPF 442 by the PSOL: Legalized abortion and Supreme Court's request to the Chamber of Deputies

On 03/08, Luiza Erundina (PSOL-SP: Catholic) gave a speech honoring International Women's Day. After reporting upon the degrading situations of different groups in Brazil and qualifying the country as "sexist, patriarchal, backward, conservative, and homophobic", Erundina announced that the PSOL would honor women by presenting a Fundamental Precept Default Action (ADPF) that would decriminalize abortion in Brazil. This was the only pro-choice speech to take place in the first half of 2017.

On 03/8, Aureo (SD-RJ) made a speech on International Women's Day, presenting a survey published by Datafolha regarding the violence suffered by women in Brazil. He drew attention "to the possibility of sneaking in financing for abortion practices" and said that he would be alert to any "subterfuge" that might encourage this sort of violence against women. He finished by saying that the "defense of life is the defense of women".

Rep. Marco Feliciano (PSC-SP) spoke on 03/15 with regard to the Supreme Court's actions:

Every time this House [...] bends itself in half over this issue and people who are progressive realize that they are going to lose the game, some political parties resort to subterfuge and go to the Supreme Court so that they can create jurisprudence and approve what this House does not approve.

Feliciano said that, in a recent survey, 78% of the Brazilian population claimed to be opposed to abortion. He pointed to PL 4.754/2016 as a solution, which would "make the usurpation of powers a crime, if any of the Powers interferes with the power of the others".<sup>19</sup> He concluded by affirming that the Evangelical Caucus would react "in this house".

On 03/16, Joshua Bengtson (PTB-PA) saluted "The Brazilian people, the evangelical family of any denomination, the Catholic people, Christians, who are 85% of the Brazilian population". He noted that he came into the House of Representa-

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<sup>19</sup> PL 4754/2016 by Mr Sóstenes Cavalcante (PSD-RJ), Paulo Foletto (PSB-ES), Ronaldo Nogueira (PTB-RS), Flavinho (PSB-SP), Givaldo Carimbão (PHS-AL), Eros Biondini (PROS-MG), Eurico Pastor (PHS-PE), Gilberto Nascimento (PSC-SP), João Campos (PSDB-GO), Diego Garcia (PHS-PR), Silas Câmara (PRB-AM), Alan Rick (PRB-AC), Renata Abreu (PTN-SP), Lobbe Neto (PSDB-SP), Luiz Carlos Haully (PSDB-PR), Stefano Aguiar (PSB-MG), Eliziane Gama (REDE-MA), Antonio Bulhões evangelical (PRB-SP), Ricardo Izar (PSD-SP), Bruno Covas (PSDB-SP), Vitor Valim (PMDB-CE), Alberto Fraga (DEM-DF) and Elizeu Dionizio (PSDB-MS)

tives saying “no” to abortion, and that his response will remain the same, as “the Church will never be progressive if it agrees to embryo killing.”

The most notable event from this period was the request on 03/29 by Minister Rosa Weber of the Supreme Court for the Chamber of Deputies and the Federal Senate to take a position on abortion up to the 12th week of pregnancy<sup>20</sup>, due to ADPF 442 filed by PSOL, which sought to legalize abortion during the first trimester. There was a critical reaction against the Court in the House, with Congressmen accusing the Court of legislating. Among those attacking the Justices position were leaders of the Evangelical Parliamentary Front, the Catholic Parliamentary Front, the President of the Roman Catholic Apostolic Mixed Parliamentary Front and the Parliamentary Front in Defense of Life and the Family.

Deputy Marco Feliciano (PSC-SP) spoke on 03/29 regarding the Court’s request for a position: “There is no more heinous crime than murdering babies who have not had a chance to be born. Even all people who are in favor of abortion are people who have already been born.”

Feliciano also said that he expected the President of the Republic and the Presidents of the Chamber of Deputies and the Federal Senate to present their positions by “saying no to child abortion.” On March 29, he spoke a second time, commenting that the media had reported on Minister Rosa Weber’s five-day deadline for the National Congress to present its position. The Deputy asked that the President of the Chamber of Deputies be sensitive and represent the Brazilian people. He called for “Parliament to not bend its knee again” and concluded:

Whenever something is voted on here and parties do not accept it, they end up taking it to the Supreme Court, which creates jurisprudence. The dictatorship of a minority thus becomes greater than the popular will that is expressed through this House.

Flavinho (PSB-SP) spoke on 03/29 regarding the Court’s, claiming that it represented an agenda that wasn’t wanted by the Brazilian people and which was motivated by the delivery of the ADPF to the Court. He denounced the groups engaged in the attempts to decriminalize abortion: “the Anis Institute of Bioethics, an organization led by Ms. Débora Diniz”, the National Association of Public Defenders (Anadep), and the PSOL (which filed the lawsuit with the STF). According to Flavinho, the

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<sup>20</sup> “STF dá 5 (cinco) dias para o Presidente Michel Temer, Câmara dos Deputados e Senado Federal se manifestarem em ação que pede a descriminalização do aborto movida pelo PSOL”. Available at: <http://g1.globo.com/politics/news/rose-weber-5-day-to-fear-mayan-and-communicate-in-action-about-abortion.ghtml>. [Accessed on 08/31/2019].

PSOL was calling for a decision on the topic “as if we had not already debated it” in the House. Flavinho reported meeting with Eunício Oliveira (the President of the Senate) to discuss the topic and also stated that the Catholic Front would stand against the measure. He compared the theme of abortion with others in front of Congress: “We are against welfare reform, we are against labor reform, and we are against abortion!” He added: “Let us have the courage to defend life in this House, because history will not forgive those who stain their hands with blood.”

Rep. Givaldo Carimbão (PHS-AL) also spoke about the Court’s request on 03/29. Chairman of the “Roman Catholic Apostolic Joint Parliamentary Front”, Carimbão met with Alan Rick (PRB-AC) of the Parliamentary Front for the Defense of Life and Family and Takayama (PSC-SP) of the Evangelical Parliamentary Front, in order to create and deliver a document in which the parliamentary fronts would take a common stand against abortion in Brazil.

On 03/29, Alan Rick (PRB-AC) stated that the “National Congress is responsible for legislating because we are representatives of the Brazilian people.” The Deputy made an appeal against the ADPF, “because the Brazilian people are for life and against abortion.”

On the same day, Julia Marinho (PSC-PA: evangelical) also declared that “The fetus is a human being so it has the same rights as any individual,” adding that the right to life is provided for in the Federal Constitution. She then said:

It is important to mention that, besides sacrificing an innocent and defenseless life, abortion greatly damages the woman’s body and places her at high risk of death. [...] There is a real possibility, postabortion, of women having natural abortions during their next pregnancies, as well as psychological problems and falling victim to serious diseases.

Evangelical Lincoln Portela (PRB-MG), speaking on 03/29, gave emphatic support to Givaldo Carimbão and Marco Feliciano in taking a stand against the Court’s request.

On the same day, Victório Galli (PSC-MT: evangelical) also addressed the theme, saying “They [the Court] want to legalize abortion in Brazil without going through the plenary of the Chamber of Deputies”. The Congressman asked the Chamber’s directorate to listen to the following groups:

The Evangelical Parliamentary Front of the National Congress, the National Conference of Bishops of Brazil (CNBB), the Roman Catholic Apostolic Joint Parliamentary Front, the Council of Pastors of Brazil and also medical councils.

Galli stated that abortion advocates often say “my body, my rules”. “They argue that a materialistic decision and mere personal convenience is more important than human life; that is, that a personal decision can justify the murder of a child”. He asked that feminists who are “abortion advocates... deal with the legion of ‘mothers’ who decided to abort because they are carrying a female baby.” He declared: “We cannot accept the relativization of the right to life”. Galli said it was the same to kill babies after “one month of gestation” as it was after “one year after birth.” He also compares Hitler’s policies with the legalization of abortion:

The Nazi leader Hitler, an atheist and materialist, was in favor of abortion and the extermination of every human being who was considered racially or otherwise “inferior” in any one of several aspects [...]. The Nazi leader committed genocide for mere personal and ideological convenience. [...] Will we let them kill our children, legalize abortion, commit genocide for mere personal and ideological convenience?

Takayama (PSC-PR) spoke on 03/30 as the President of the Evangelical Parliamentary Front. He expressed surprise at the request for the House and Senate to express their views on the legality of abortion. “The National Congress is backed by legislation. Legislation ensures life. The Minister does not even have to ask for 5 days to know our position; she simply has to obey the Constitution.”

Takayama added, “We cannot allow the interruption of life,” and said that “the child has the right to life.” He concluded by stating “that the State is secular, but the nation is Christian and we must respect the 82% of Christians in this country.”

Also on 03/30, Roberto de Lucena (PV-SP) referred to the elected congressmen, pointing out that the Court would be legislating “in our place, in what is not within its rightful domain”. “It’s about Brazil legalizing the murder of children, of Brazilians, because at 12 weeks, the child is already formed.” He described abortion of microencephalic children as “eugenics” and predicted that abortions for Down Syndrome children would also be decriminalized. He said there was no “consensus, because Brazilian society rejects abortion. Brazil is against abortion. Brazil is for life.”

Cabo Daciolo (PTdoB-RJ: evangelical), also on 03/30, assured the Chamber that “We have an agenda here in the National Congress which includes social security reform, labor reform, privatization, outsourcing, and abortion.”

Marco Feliciano (PSC/SP) took up the theme again on April 5<sup>th</sup>, comparing the situation of Venezuela with that of Brazil, because the “Superior Court of Venezuela taken upon itself the role of Parliament”. He continued by saying that “Today we risk the Supreme Court ruling contrary to this House and the Brazilian

people; [ruling against] the will of the population.” He ended by claiming to speak on behalf of the conservative Brazilian people: “no to abortion, but yes to life!”

On April 12th, Deputy Flavinho (PSB/SP) spoke, presenting the CNBB’s note on issues such as “the defense of the poor” and “Social Security reform”: “The note deals very strongly and clearly with the defense of the life[...]: The right to life is unconditional. It must be respected and defended at any stage or condition in which the human person is.” Flavinho concluded by saying:

The Supreme Court should hear the voice of almost 80% of Brazilians who are against abortion. Mme. Minister Rosa Weber, Mr. Minister Barroso, listen to the voice of the people, Your Excellencies were not elected by popular vote, but have the humility to listen to the voice of the population! We are against abortion and for life.

On 05/19, Givaldo Carimbão (PHS-AL) deeply regretted that “on one day the Federal Supreme Court liberated abortion and on the other banned calf-wrestling.” According to Carimbão, the Supreme Court is “misrepresenting its functions”, as it is the “role of the Legislature” to deliberate on such topics as abortion and calf-wrestling. “How does the Supreme Court release liberate one day and the other day prohibit calf-wrestling on the other because it breaks calves’ tails? Is calf’s tail more important than a life?” he asked.

### **The *jabuti*: The inviolability of the right to life from conception on?**

One event that had a lot of repercussions in the House was the vote on the proposed amendment to the Constitution, PEC 181/2015, coming in from the Senate and authored by Senator Aécio Neves (PSB). This dealt with the extension of maternity leave in the case of premature birth and was joined to PEC 58/2011, authored by Jorge Silva<sup>21</sup>, which dealt with the same subject. The amendment inserted the right to life from conception into the Constitution and would prohibit abortion in case of rape and in case of health risks to women. Luiza Erundina (PSOL-SP) spoke on 11/09 to “denounce and repudiate the maneuver of the President of the Special Committee” regarding the Proposed Amendment to the Constitution. She repudiated the attitude of Commission President Evandro Gus-

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<sup>21</sup> The Representative was elected on the ticket PDT for the 2011-2014 legislature, where he presented the bill. He was part of the PROS when the legislation came under review in 2015-2018.

si (PV-SP) and of Rapporteur Jorge Tadeu Mudalen (DEM-SP: evangelical), who called the vote without giving Erundina and Jo Moraes time to arrive and speak. Erundina denounced what she called a “jabuti” which proposes to constitutionalize the “prohibition of abortion in case of rape and in case of health risks to women”, referring to the insertion into the proposed amendment of the expressions “dignity of the human person from conception on” and “the inviolability of the right to life from conception”.<sup>22</sup>

Taking an opposing position, Deputy Flavinho (PSB-SP) gave a speech on 11/09 celebrating the “great victory” for those who defend “life” in the country: the approval of PEC 181 by the “Life Commission”.<sup>23</sup> “We were able to approve an increase in maternity leave for mothers who have premature babies, but also the right of the unborn child in the mother’s womb, adding to Art. 5 of the Constitution, which deals with the inviolability of life, the right of life of the unborn, from conception on”. According to Flavinho, “this is about equality”, ensuring that “the right to life belongs not only to the mother, but also to the unborn child.”

In 2017 a series of legislative proposals regarding PEC 58/2011 were presented, which was joined to PEC 181/2015 in June 2017: REQ 6/2017, REQ 8/2017, REQ 10/2017, REQ 16/2017, REQ 17/2017 and REQ 18/2017. These all propose to hold different public hearings in the Special Committee of the House of Representatives discussing PEC 58/2011.

Application REQ 6/2017, authored by Jorge Tadeu Mudalen (DEM-SP), called for a public hearing to be held to discuss PEC 58/2011 with “judicial activism” as its theme.<sup>24</sup> REQ 8/2017, written by Marcos Soares (DEM-RJ), demanded a public hearing to discuss “The risks of abortion and its consequences – both in the judicial and emotional spheres”.<sup>25</sup> REQ 10/2017, authored by Diego Garcia (PHS-PR), Dr. Jorge (PHS-ES), Pastor Eurico (PHS-ES), and Givaldo Carimbão (PHS-AL),

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<sup>22</sup> The changes were: “Article 1 (3) of the constitutional text to receive the phrase: ‘dignity of the human person from conception on’.” In Article 5, “the inviolability of the right to life from conception on” was added. Cf. Tony Oliveira: Câmara analisa PEC 181. “Entenda seus impactos sobre o aborto no Brasil”. *Carta Capital*, 05/12/2017. Available at: <https://www.cartacapital.com.br/politica/camara-vota-pec-181-entenda-seus-impactos-super-o-aborto-no-brasil>. [Accessed on 06/25/2018].

<sup>23</sup> What the representative calls the “Commission of Life” is the Special Committee for the Discussion of the Proposed Amendment to the Constitution, No. 181/2015, a measure which deals with maternity leave.

<sup>24</sup> The guests were Dr. Ives Gandra Martins (judge) and Dr. José Miranda Smith (lawyer and President of ADIRA – Associação Nacional da Cidadania pela Vida – Brasil sem Aborto).

<sup>25</sup> The following were invited to the public hearing: the Federal Prosecutor’s Office (MPF); the Federal Council of Medicine (CFM); the National Network for Defense for Life; and the Inter-American Observatory of Life and the Family.

called for a public hearing to debate the “value of the family in the light of maternity leave and the defense of life”. REQ 16/2017, by Flavinho (PSB-SP), called for a public hearing aimed at debating the lack of government financial support for shelters that receive women who, unwilling to have an abortion, were abandoned by family members. REQ 17/2017, also from Flavinho (PSB-SP), proposed public hearings aimed at debating the obligation of confessional hospitals to conduct abortions and the ethical implications of this. REQ 18/2017, authored by Flavinho (PSB-SP), requested a public hearing to discuss the actual numbers of legal and illegal abortions performed in Brazil and to inquire whether there is any study on the physical, psychological, social, and financial conditions of pregnant women who want to abort.

### Other bills in 2017

REQ 85/2017, addressed to the Commission for the Defense of Women’s Rights and authored by Diego Garcia (PHS-PR), requested an addition to application 75/2017, including names in a public hearing to clarify data regarding the annual rate of female mortality due to abortions in Brazil.

There were a number of proposals to amend the Penal Code to increase abortion penalties. These included the bill authored by Captain Augusto (PR-SP), amending the Penal Code (Decree-Law 2848/1940); Bill 9105/2017 amending Article 125 regarding “Providing abortion without the consent of the pregnant woman”, which would be punished “from 10 to 20 years” imprisonment; Bill 9106/2017 amending Article 126 regarding “causing abortion with the consent of the pregnant woman”, increasing the penalty of imprisonment to “three to six years”; and Bill 9107/2017 amending Article 127 and would be put in force with the following wording:

Art. 127 – The penalties stipulated by the previous two articles are increased by two-thirds if, as a consequence of abortion or the means used to induce one, the mother suffers bodily injury of a serious nature; the penalties are doubled in the case of her death. (NR).

Two propositions addressed the Zika epidemic. Legislative indication INC 2960/2017, by Flavinho (PSB / SP), provided for the distribution of repellent to women in the Bolsa Familia program, due to their social vulnerability and the risk of miscarriage and harm to fetal nervous systems. REQ 104/2017, authored by Dep. Rosinha da Adefal (PTdoB-AL), demanded a public hearing regarding

the abortion of fetuses with microcephaly and the creation of a National Microcephaly Awareness day.

Among the social control projects was Bill PL 7142/2017, authored by Francisco Floriano (DEM-RJ), which amended Law 8742/1993 concerning the organization of Social Assistance in Brazil. The Bill proposed the establishment of a Specialized Protection and Attendance Service for Chemically Dependent Pregnant Women (Paegé). This would specialize in “welcoming, caring for, and helping drug-addicted pregnant woman to recover from their addictions, ensuring the physical and mental health of the addicted mother and the unborn child”.

REQ 5884/2017, authored by several PT Congresspeople<sup>26</sup>, denounced the attack on women’s rights exemplified by the “Unborn Statue”, “Family Statute” and “School Without Parties” projects. The Unborn Statute was the most important initiative taken against any form of abortion. REQ 64/2017, authored by Diego Garcia (PHS-PR), required the holding of a public hearing to discuss Birth Status (PL 478/2007). Contrary to this initiative, REQ 6693/2017, authored by Glauber Braga (PSOL-RJ), requests the reintroduction of Bill 478/2007 (the Unborn Statute) in such a way that it would include the Commission for the Defense of Women’s Rights (CMULHER) on the list of the standing committees that should express their views regarding the bill. A similar application by Erika Kokay (PT-DF), REQ 7803/2017, called for the reintroduction of PL 4703/1998 to the Commission for the Defense of Women’s Rights, given that the project proposes to “include the practice of abortion in the list of heinous crimes provided for by the Penal Code”.

Application RIC 2886/2017, authored by Deputy Jean Wyllys (PSOL-RJ), requested information from the Ministry of Health about the current policy on legal abortion services, referring to Zika and ADPF 442.

The author of legislative nomination INC 4421/2017, Sóstenes Cavalcanti (DEM-RJ), called for action regarding Pedro II High School, which has become an “ideological laboratory of the far left”, appropriated by PSOL, an advocate for “liberating abortion and drug use” and promoting “gender ideology”.

## Final considerations

The period from 2015 to 2017 in the House of Representatives was marked by fierce anti-abortion mobilization undertaken by the vast majority of deputies

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<sup>26</sup> Ana Perugini (PT-SP), Benedita da Silva (PT-RJ) (evangelical), Érika Kokay (PT-DF), Luizianne Lins (PT-EC), Margarida Salomão (PT-MG) and Maria do Rosário (PT-RS) in a request demanding the observation of a solemn session in honor of International Women’s Day.

who gave speeches and/or formulated legislative proposals. Pro-choice mobilization occurred mainly as a reaction to conservative initiatives, but also in connection with other actors such as the Supreme Court, whose initiatives for authorization of abortion in case of Zika infection or the legalization of abortion during the first trimester encountered much participation from civil society groups. The reaction to PL 5069/2013 in 2015, which sought more restrictions on access to legal abortion, was the only time pro-choice demonstrations outnumbered anti-abortion manifestations.

One of the most repeated arguments during the period was that the majority of the Brazilian population is against abortion and religious and that these two facts thus demand respect. Other religious arguments referred to the sacred character of life, given by God. The argument for the right to life from conception on thus links a biological early life milestone with legal expressions, but its premise continues to be religious, based upon the sacredness of life. Biological arguments (such as genetic individuality and differences between the woman's body and that of the fetus) or the description of fetal body characteristics were employed to reinforce the thesis of the right to life from conception. Regarding abortion liberation in case of Zika infection, repeated allegations of eugenics were raised. To counter the feminist denunciations that the pro-life movement opposes women's rights, many pro-life congressmen said they defended women by defending fetuses, and cited data from studies showing that abortion is more harmful than rape. The predominant representation employed was that of the woman as a support system for fetal development, who must submit herself to the fetus' right to life. A peculiar reading was thus given of the notion of person as an autonomous individual, "the normative being of institutions", the representation of the "values of equality and freedom" (Dumont, 1997: 57), in which the fetus becomes the subject of rights and the woman is encompassed by it.<sup>27</sup>

A strong reaction to the Supreme Court's movements was also seen in legislative proposals such as those formulated to stop the legalization of abortion in cases of Zika virus infection and during the first trimester. A significant part of the legal arguments presented claimed that the Supreme Court was usurping the Legislature's rights and responsibilities by proposing rules that are not in accordance with the laws in force (by not recognizing abortion as a crime if performed up until the third month of gestation), by asking Congress to state its position regarding the legality of abortion, or by making judgements in cases such as ADI 5581 and

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<sup>27</sup> This concept of the individual is revealed in the full name of the movement which, translated, is "The National Movement of Citizens for Life – Brazil Without Abortion." In *Who We Are*. Available at: <https://brasilemaborto.org/quem-somos/>. [Accessed on 09/01/2019].

ADPF 442. Several Congressmen contrasted the protection of animal species with the alleged lack of protection for unborn humans.

A conservative reaction could also be seen in the initiatives demanding respect for religious and family beliefs, as well as those aimed at banning public debate about abortion in schools and the media. These were often associated with denunciations employing the accusatory category “gender ideology”. Such legislative proposals were intended to ensure that the religious are not criminalized by preaching against such practices, and are comparable to those of such movements as Schools Without Parties (Miguel, 2016: 596). This movement raised the banners of ultra-conservative religious groups, claiming that there was “a dispute between school and family authority over children”. The vast majority – but not all – of the authors of anti-abortion pronouncements and legislative propositions are Congressmen with a public religious identity, and there are more evangelicals than Catholics in this category, but also one Spiritist congressman. The Catholic and evangelical fronts were very active in the debates, as were the fronts defending life. A militant nucleus belonging to the Catholic Charismatic Renewal stands out in this respect.

It is surprising that there were so few allusions to the secular nature of the Brazilian State (Mariano, 2011), considering that this category is much employed to question the position of religious agents in public space. To the contrary, many parliamentarians explicitly justified their positions claiming that there is a Christian majority in Brazil and, without disguising their reasons, claimed “a place for themselves in order to broaden their influence in public space” (Vital da Cunha & Lopes, 2013: 15). Some took the stance of congressional paladins such as Flavinho and Pastor Marco Feliciano (to name the most engaged Catholic and evangelical deputies). However, the majority of the religious actors in the debate employed religious terms is far less than legal reasoning. The preference for legal and scientific arguments indicates a search for language that ensures legitimacy in the public space, legitimacy that results from a discursive process – debates in the parliamentary sphere, in this case (Montero, 2012).

Anti-abortion and pro-birth positions are hegemonic among Brazil’s religious Congressmen but were also recorded among those with no identified religion. Pro-choice positions were few in number, almost all appearing among parliamentarians with no identified religion and members of leftist parties. The anti-abortion position stands out in parties ranging from the right to the left, a point that I have observed elsewhere (Luna 2014). With regards to gender, few women representatives spoke, an even lower proportion than their number in the House of Representatives. Of the 15 who spoke, 10 evidenced a pro-choice position, four were anti-abortion and one indefinite. In other words, in this sample, we find more women parliamentarians defending feminist claims than holding conservative banners.

Cross-referencing this information with religious affiliation, it appears that of the 10 who took pro-choice positions, one is Catholic and another evangelical. Of the four women taking anti-abortion positions, three are evangelical and the fourth (Keiko Ota) made a religious statement, but did not identify her religion (if any).

Parliamentarians who spoke out against the conservative agenda in the House of Representatives opposed the criminalization of abortion because of the current law leads to the death of women in clandestine abortions and this is considered to be a public health problem. There was also resistance against bills that seek to further restrict the right to legal abortion, the case of Eduardo Cunha's PL 5069/2013, which prevents emergency contraception in the care of victims of violence, or PEC 181/2015, which aims to include the right to life from conception in the Constitution. The Unborn Statute appears to be a key piece of legislation for both groups, provoking resistance on the one hand and serving as a rallying point on the other as a means of ending the debate on decriminalization of abortion.

These findings reinforce those of previous studies (Rocha, Rostagnol & Gutierrez, 2009; Gomes, 2009; Machado, MDC, 2012; Luna, 2014, Machado, LZ, 2017) demonstrating the continued growth of the anti-abortion position in debates in the political arena after the turn of the century. It also shows the complex articulations between religious and political actors in a scenario of conservatism predominance (Vital da Cunha & Lopes, 2013) and an attempt to preserve a legislative space perceived as threatened due to previous decisions of the Brazilian Federal Supreme Court<sup>28</sup> and the initiatives of left-wing governments<sup>29</sup> to review punitive legislation. The alliance of evangelicals and Catholics – especially those Catholics involved in the Charismatic Renewal movement – in defense of a conservative agenda regarding sexual morality and customs, has been observed by other researchers (Machado, M.D.C., 2015; Luna, 2014). Maria das Dores Campo Machado (2015:48) sees as conservative religious activism the alliance of pentecostals and Catholic charismatics in the “defense of Christian values” and their effort to “influence Brazilian legislation in the field of family, sexuality and human reproduction” (Machado, MDC, 2012). On the other hand, the present study also points that the resistance by feminist and other actors is sensitive to this move-

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<sup>28</sup> Like ADI 3510, which allowed the use of human embryos left over from assisted reproduction to develop stem cell research, or ADPF 54, which allowed therapeutic anticipation of delivery for anencephalic fetuses.

<sup>29</sup> The tripartite commission for the review of punitive abortion legislation and the initial version of the PNDH3 (National Human Rights Plan) that proposed abortion decriminalization (Machado, LZ, 2017; Machado, MDC, 2015; Luna, 2014) are examples of left-wing initiatives that faced opposition from the Catholic Church and the National Congress and did not go forward.

ment. This is shown when these actors denounce the fact that the position of those who intend to protect women does not, in fact, represent women.

When we take into consideration previous legislatures, the novelty of this one is in the tactic of presenting the religious as victims of persecution or disrespect – a posture that is associated with the emergence of secular movements such as “School Without Party”, which denounce ideological indoctrination. Evidence that conservative activism is not restricted to the National Congress, but also branches into civil society, the Parliament between 2015 and 2017 foreshadowed the victory of conservative forces in the 2018 elections.

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