

THE
STATE_{OF}
ABORTION
IN THE UNITED STATES

JANUARY 2022

The State of Abortion in the United States

is a report issued by the National Right to Life Committee (NRLC). Founded in 1968, National Right to Life, the federation of 50 state right-to-life affiliates and more than 3,000 local chapters, is the nation's oldest and largest national grassroots pro-life organization. Recognized as the flagship of the pro-life movement, National Right to Life works through legislation and education to protect innocent human life from abortion, infanticide, assisted suicide and euthanasia.

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CAROL TOBIAS

National Right to Life President



Over five decades ago, a movement began to take shape. Doctors and teachers, lawyers and homemakers, men and women of diverse backgrounds, different faiths and opposing political viewpoints all came together united by one common belief: that taking a human life through abortion was anathema to American values. As pro-abortion forces began pushing for changes in state laws, those dedicated pro-life activists rose up and became a powerful voice against those who viewed human life as expendable.

Their task became more challenging when the U.S. Supreme Court federalized the abortion issue. In its twin *Roe v. Wade* and *Doe v. Bolton* decisions, which were handed down on January 22, 1973, the Court legalized abortion for any reason. Tragically, 49 years later, National Right to Life estimates that more than 63 million unborn children have lost their lives as a result of those decisions.

However, the right-to-life movement has remained undeterred. Through our determination to protect mothers and their children, we continue to see evidence that our efforts to educate our nation about the unborn child's humanity, and our efforts to enact protective pro-life legislation, are having a tremendous impact in moving our nation away from *Roe* and *Doe*'s deadly legacy. Now, on this 49th anniversary of the Court's action, we pause to look at the state of abortion in the United States.

Since *Roe v. Wade* National Right to Life and its state affiliates have been working to advance state laws that not only protect unborn children and their mothers, but also challenge the core tenants of *Roe* and *Doe*. That decades-long strategy has led back to the U.S. Supreme Court as we await a decision later this year in *Dobbs v. Jackson Women's Health Organization* case. That case will decide the fate of Mississippi's Gestational Age Act, which seeks to protect an unborn child after 15 weeks — a time when all organ systems are formed and functioning, and the child is simply growing.

These laws have also helped lead to an overall decline in the annual number of abortions. From recent data analyzed in these pages, we know the annual number of abortions is in an overall decline. These legislative efforts — to enact protective laws that provide legal protection to unborn children and offer hope and help to their mothers — are at the very heart of our work, and they are one of the keys to ending abortion in the United States.

All of this is welcome news. Pro-life education and legislative efforts are making an impact on our culture and in the lives of women facing unexpected pregnancies. But there is still much to be done.

This ninth annual "State of Abortion in the United States" is not just a snapshot of where we are as the nation observes the 49th anniversary of *Roe v. Wade* and *Doe v. Bolton*, but also a blueprint for how we move forward to build a culture that values life and respects mothers and their children.

A handwritten signature in blue ink that reads "Carol Tobias".

UNITED STATES ABORTION NUMBERS

EDITOR'S NOTE: *On the following pages, National Right to Life provides analysis of abortion data released in 2021 by the U.S. Centers for Disease Control and Prevention (CDC).*

Abortion data collected by the Guttmacher Institute (which was originally founded as a special research arm of Planned Parenthood) are considered more complete and reliable because the organization relies on survey data collected directly from abortionists in all 50 states. The CDC, on the other hand, relies on voluntary reporting from state health departments and agencies. As a result, the CDC's data are incomplete, as it has been missing abortions from California, New Hampshire, and at least one other state from its count since 1998.. Other caveats are provided within the analysis of CDC data below.

As a result of our analysis of data from both Guttmacher through 2017, and the CDC through 2019, and estimating figures for subsequent years (2017-2021), National Right to Life estimates that 63,459,781 abortions have been performed in the United States since 1973.

In late November 2021, the U.S. Centers for Disease Control (CDC) released its latest abortion surveillance report for 2019¹. The numbers continue to show a steady decline in abortions since 2009, although the 2019 survey shows a slight increase in abortions.

Relying on reports from health departments across the country, the CDC reported 629,898 abortions for 2019 compared to 619,591 abortions for 2018.

In 2019, in the reporting areas included in the report, the CDC found an abortion rate of 11.4 abortions per 1,000 women aged 15–44 years. This was a slight increase from 11.3 abortions per 1,000 women in 2018.

The abortion ratio looks specifically at the outcomes with pregnant women. The CDC found a ratio of 195 abortions per 1,000 live births. Even with that increase, it is still lower than the 196.3 recorded in 1973, *Roe's* first year.

As always with the CDC, we offer the important caveat that its numbers significantly underestimate the actual national totals. There is no data from California, New Hampshire, and Maryland, which the CDC admits, using data from Guttmacher, would otherwise account

[1] The CDC obtains data from 47 states and separate reports from the District of Columbia and New York City. There was no data from California, Maryland or New Hampshire. These together are collectively referred to as "reporting areas." Because data from New York City is also included in data for the state, we will generally only refer to data from DC and the remaining 47 states.



for nearly one out of every five abortions performed in the U.S.

Even where they do have data, the CDC relies on the reports of state health departments which miss a certain percentage of those abortions found by the Guttmacher Institute, which surveys abortion clinics directly.

**ESTIMATED ABORTIONS
IN THE UNITED STATES**
63,459,781
SINCE 1973

Consequently, while no one, including the CDC, thinks its numbers present a reliable national total, they still provide a regular benchmark and are very useful for tracking long-term demographic trends.

Analysis: Chemical Abortions Behind Increasing CDC Numbers

For nearly three decades, abortions, abortion rates, and abortion ratios have been falling, to the point that they are about half what they were in 1980s. In the past couple of years, however, abortions recorded by the U.S. Centers for Disease Control (CDC) have shown slight increases, indicating a possible reversal of the long term trend.

If you follow the numbers closely, you'll see the long term downward trend. But you'll also see what is likely the cause of the recent increase. One area that has been steadily growing over the last twenty years, and appears to have accelerated in the last few, is chemical abortion: those performed with abortifacient drugs like RU-486 (mifepristone) and misoprostol.

From the time mifepristone hit the market in 2000, that trend has been ever upward, to the point that the latest CDC figures for 2019 put the percentage of chemical or "medical" abortions among the overall abortions at 43.7%.

Events in the past couple of years indicate that even this number is poised to skyrocket.

A bit of historical perspective

When Étienne-Émile Baulieu developed the abortion pill RU-486 back the 1980s, abortion numbers in the U.S. were experiencing their peak, hovering between 1.5 and 1.6 million a year. Abortion rates and ratios were just starting to fall, though, with the CDC's abortion rate peaking at 25 abortions for every thousand women of reproductive age in 1980 but then falling over the next few years, down to 21 per thousand by 1994 when the U.S. trials of mifepristone began.

Abortion ratios, as measured by the CDC, peaked at 364.1 abortions for every 1000 live births in 1984, but were already down to 245 per thousand live births by the time the abortion pill was approved for use in September of 2000.

Beyond the fascination with the idea of a drug-induced abortion (traced back to the days when women were given noxious herbal potions to try and prompt miscarriage), there was clearly an effort in that development to rebrand their product and revive sales.

UNITED STATES ABORTION NUMBERS

Surgical abortion had, after years of experience, grown increasingly unpopular, women finding it “mechanical,” “invasive,” “abrupt,” dreading the cutting, the scraping, the humiliation of the clinic and the stirrups of the operating room.

Advocates offered chemical abortion as an “easy,” “safe,” “simple” alternative to surgical methods. Just take a pill and, almost like magic, the baby disappeared (Sue Halpern, in the April 1987 issue of *Ms.* magazine described it this way: “Imagine being pregnant, swallowing a pill, and – presto! – not being pregnant any longer.”)

That the truth was anything but – chemical abortions are bloody (more than a surgical abortion), extremely arduous and painful affairs that, when they work, take days to complete – didn’t matter so long as the narrative of the “new and improved” abortion took hold and the media dutifully spread the word.

There were some bumps along the way when several chemical abortion patients in the early 2000s mysteriously contracted rare bacterial infections and died, while others hemorrhaged to death. A couple more died of ruptured ectopic pregnancies, whose signs (pelvic pain and bleeding) confusingly mimic chemical abortions.

But investigations, a few sternly worded warning letters from the U.S. Food & Drug Administration (FDA), and assurances by the abortion industry that “no causal link” had been established between the abortion drugs and the deadly incidents allowed the promotion of mifepristone and the myth of mild “medication” abortion to continue.

So, to summarize, decades ago abortion advocates saw in chemical abortion a way to try and reverse the downward trend in abortion numbers and chose to pursue that agenda aggressively, fighting any obstacles, legal or otherwise, that stood in their way.

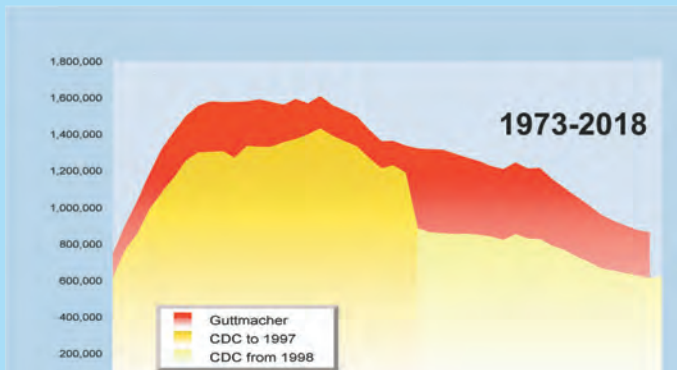
Making things easier on the abortion pill peddlers

Ignoring the two dozen reported deaths and thousands of incidents of bleeding, infection, and failed abortion that put many women in the hospital (or the morgue), abortion advocates pressed on with their promotional campaign for broader chemical abortion availability, focusing their attention on the few remaining safety regulations the government had imposed on the abortion pill.

When originally approved by the FDA in 2000, the agency directed that the pills were only to be given out at the hospital, clinic, or doctors office and then only under the supervision of a physician who certified that he or she understood how the pills worked and could either treat or refer for treatment any complications that arose during the course of the abortion.

The original approved protocol required three visits. The first was to screen the woman to determine gestation (the pills effectiveness declines the farther advanced the pregnancy) and to rule out ectopic pregnancy (that the baby is not implanted somewhere outside the uterus, which mifepristone does not treat and can prove deadly in the case of a rupture) and other possible contraindications (e.g., allergies or conditions that could make use the pills dangerous or deadly for the patient). After counseling on how to use the pills and what to expect, the woman would sign some paperwork to that effect and then was given the mifepristone pills to take there in the office.

Reported Annual Abortions



1973	744,610	615,831
1974	898,570	763,476
1975	1,034,170	854,853
1976	1,179,300	988,267
1977	1,316,700	1,079,430
1978	1,409,600	1,157,776
1979	1,497,670	1,251,921
1980	1,553,890	1,297,606
1981	1,577,340	1,300,760
1982	1,573,920	1,303,980
1983	1,575,000	1,268,987
1984	1,577,180	1,333,521
1985	1,588,550	1,328,570
1986	1,574,000	1,328,112
1987	1,559,110	1,353,671
1988	1,590,750	1,371,285
1989	1,566,900	1,396,658
1990	1,608,600	1,429,247
1991	1,556,510	1,388,937
1992	1,528,930	1,359,146
1993	1,495,000	1,330,414
1994	1,423,000	1,267,415
1995	1,359,400	1,210,883
1996	1,360,160	1,225,937
1997	1,335,000	1,186,039
1998	1,319,000	884,273*
1999	1,314,800	861,789*
2000	1,312,990	857,475*
2001	1,291,000	853,485*
2002	1,269,000	854,122*
2003	1,250,000	848,163*
2004	1,222,100	839,226*
2005	1,206,200	820,151*
2006	1,242,200	852,385*
2007	1,209,640	827,609*
2008	1,212,350	825,564*
2009	1,151,600	789,217*
2010	1,102,670	765,651*
2011	1,058,490	730,322*
2012	1,011,000	699,202*
2013	958,700	664,435*
2014	926,190	652,639*
2015	899,500	638,169*
2016	874,100	623,471*
2017	862,320	612,719*
2018	871,806 §	619,591*
2019-21	886,677 §	629,898*

*Excludes NH, CA and often at least one other state.

§ NRLC projection for calculation

ABORTION STATISTICS

United States Data and Trends

Abortion Trends Continue to Show Overall Decline

There are two basic sources on abortion data in the U.S.:

- The U.S. Centers for Disease Control (CDC) publishes yearly, but relies on voluntary reports from state health departments (and New York City, Washington, D.C.). It has been missing data from California, New Hampshire, and at least one other state since 1998.
- The Guttmacher Institute (GI) contacts abortion clinics directly for data but does not survey every year.
- Because it surveys clinics directly and includes data from all fifty states, most researchers believe Guttmacher's numbers to be more reliable, though Guttmacher still believes it may miss some abortions.

Both the CDC and Guttmacher show significant recent drops and sustained declines over the last 25 years.

- Total abortions dropped 28.98% from 1998 to 2019 with the CDC, and fell 46.4% from 1990 to 2017 with GI.
- Total abortions fell below 1 million for the first time in the 2013 GI count and have continued downward to 862,320 in the most recent GI figures for 2017.
- The **abortion rate** for 2017 for GI was 13.5 abortions for every 1,000 women of reproductive age (15-44), less than half what it was in 1981 (29.3) and even lower than when abortion was legalized in the U.S. in 1973 (16.3).
- Guttmacher says there were 18.3 abortions for every 100 pregnancies ending in live birth or abortion in 2016, 18.4 for 2017, lower **abortion ratios** than any since 1972.
- Guttmacher says that the number of abortion "providers" has dropped from a high of 2,918 in 1982 to 1,587 in 2017.
- According to the CDC, the percentage of abortions performed with chemical abortifacients like mifepristone rose from 9.6% in 2004 to 43.7% in 2019.

The Consequences of *Roe v. Wade*

63,459,781

Total abortions since 1973

Based on numbers reported by the Guttmacher Institute 1973-2017, with 3% added for GI estimated possible 3-5% undercount for 1973-2014. Additional 12,000 per year for 2015-2020 for abortions from "providers" GI says it may have missed in 2015-2017 counts.

01/22

UNITED STATES ABORTION NUMBERS

Over the next day or so, the mifepristone acted to block the action of the pregnancy hormone progesterone, essentially telling the woman's body the lie that no pregnancy had occurred, directing her body to begin shedding the protective, nutritive uterine lining, thereby shutting down the baby's life support system.

In a second visit a couple of days later, the physician administered a second drug, a prostaglandin named misoprostol, to begin powerful uterine contractions to force the dead or dying baby out.

A third visit, sometime in the next two weeks, was to confirm completion of the abortion or to schedule her for surgery to finish the abortion if the chemical method failed and she still wished to abort.

Abortion advocates objected to the paperwork, the dosages (three pills of mifepristone, two of the misoprostol), and the original limitation to patients no more than seven weeks pregnant (measured from last menstrual period, or LMP). But most of all, they objected to any requirement that they dispense the pills in person, that the woman had to come to the clinic to obtain her pills, have her interview, or have an in-person examination.

These rules, they felt, limited the market for these pills and discouraged doctors from offering them.

The abortion industry was able to get the FDA to forego any requirement in the original protocol that a woman's gestation be confirmed by ultrasound and decided that it was sufficient that a physician be able to refer a patient for treatment if something went wrong (rather than requiring the prescribing physician him or herself be surgically qualified). But it wasn't until March of 2016 that the FDA relented on some of the other concerns and changed dosages (1 pill mifepristone, 4 pills misoprostol), extended the cut off to ten weeks LMP, broadened the prescriber pool to include any certified healthcare provider, and allowed women to receive and take the second drug — misoprostol — at home.

None of these changes addressed the safety issues that have plagued mifepristone from the beginning and nothing made these abortions any less painful or difficult for the patients. But they did make things easier on the abortion pill providers and allowed them to expand the numbers of prescribers, thus making these chemical abortions more widely available.

Growth in the numbers of chemical abortions took off at that point, CDC data appears to show. And that seems to have been the real point.

CDC numbers tell the story

Looking back, it is easy to see how these changes played out in the backdrop of the abortion numbers reported by the CDC since 2000.

Beginnings were modest, as the abortion pill producers ramped up promotion and production, making sure physicians knew of their product and what was involved in obtaining and prescribing these pills. They were not available through pharmacies, but had to be ordered directly from the U.S. distributor and any would be prescriber had to certify they understood how they worked.

Not surprisingly, the CDC recorded only 1.7% of its abortions were chemical ones in 2000 and that share didn't break the 10% barrier until 2004. After a few fairly well publicized deaths in 2003, 2004,

and 2005, the percentage of chemical abortions dropped back to 10.5% in 2006 after reaching 12.1% in 2005.

After a 2006 CDC/FDA investigation of several infection deaths associated with use of the pill that inexplicably blamed pregnancy in general (when data showed deaths were actually concentrated among chemical abortion patients), these abortions picked back up again in 2007 rising about 1.5% to 2% a year through 2015 when the overall percentage hit 26.8%.

After 2016, as mentioned above, when the FDA relaxed its protocol and expanded the prescriber pool, the percentage of abortions that were chemically induced took off, jumping to 31.3% and increasing between 3.5% to 5% a year.

In the latest CDC figures for 2019, chemical or “medication” abortions constituted 43.7% of the abortions that the CDC was able to categorize by method. This includes both the 42.3% of abortions the CDC records as performed at 9 weeks or less and the 1.4% of those performed at greater than 9 weeks.

It should be noted that in several states, the number of chemical abortions already comprises more than half of the abortions performed in that state. In Colorado, 59.2% of abortions are chemical, 50.4% in Georgia, 67.8% in Iowa, 64.5% in Kansas, 50.4% in Kentucky, 50.7% in Maine, 61.5% in Mississippi, 58.4% in Montana, 60.8% in Nebraska, 50.8% in Oklahoma, 50.8% in Oregon, 60.8% in South Carolina, 50.9% in Tennessee, 59.5% in Vermont, and 96.8% in Wyoming.

This list is definitely incomplete, as several states do not report abortion methods (or any abortions) to the CDC, including some with large populations and high numbers of abortionists like California, Illinois, and Maryland.

The trendlines are clear, however. While surgical abortion began falling in the 1980s, chemical abortion’s arrival on the scene in September of 2000 began to counter the overall downward trend, temporarily slowing the decline of the 1990s.

Overall, however, downward trends accelerated from about 2007 onward for the next several years, perhaps as a result of successful pro-life legislation by many states and subsequent closure of many surgical abortion centers. But even during that decline, chemical abortions rose and abortionists were able to add many new members to their ranks.

The increase in these abortions was magnified by the government’s official revision of the chemical abortion protocol and its loosening of safety and distribution requirements in 2016, resulting in growth of chemical abortions of sufficient magnitude to reverse trends and see overall growth in the CDC’s abortion numbers in 2018 and 2019.

Now the abortion industry, like a shark in the water smelling blood, is seeking the abandonment of whatever regulations on chemical abortion distribution remain, hoping to bring abortion pills to every neighborhood in America.

UNITED STATES ABORTION NUMBERS

Bringing abortion pills home

As mentioned earlier, abortion pill promoters have, from the beginning, fought to separate abortion from the abortion clinic as much as possible. Chemical abortion enabled doctors to be able to offer abortion even if they did not have an operating room or surgical equipment or even surgical skills, opening up a whole new pool of providers.

Changes to regulations allowing not just doctors, but any “certified healthcare provider” to order and prescribe the pills expanded the pool further. That the pills could be ordered, prescribed or dispensed not simply “by” such a person but “or under the supervision” of such a person essentially meant that a counselor or even receptionist could pass out the pills even if the official supervising prescriber were miles away.

The new protocol put in place in 2016 officially required only one official visit to the clinic or doctor’s office to pick up the pills, so that women no longer had to return for the prostaglandin or even a final follow up to determine the abortion’s completion. Even this was not good enough for the abortion pill’s promoters, who wanted the ability to eliminate any and all required visits.

Planned Parenthood’s Iowa affiliate began offering webcam or “telemedical” abortions in July of 2008, where a woman could show up at a remote rural store front, have a brief online interview with an abortionist back in the city, and have pills released to her from a desk drawer at her location. She was given a hotline to call if she had problems.

Exactly when it began is somewhat fuzzy, but Rebecca Gomperts, the longtime abortion advocate responsible for the “Abortion Ship” pushing abortion pills for women in countries where abortion was illegal, set up a website sometime around the mid-to-late 2000s where women could order abortion pills online after answering a few medical questions.

Originally supposed to be for women in countries where abortions were illegal, Gomperts officially expanded operations to America with a new website “Aid Access” in 2018, saying that while abortion was still technically legal in the U.S., it was becoming more difficult for many women to access and she felt compelled to do something about it.

The first official move to “abortion by mail” came from a group called Gynuity, who began offering “TelAbortion” in November of 2016, a few months after the FDA loosened its protocol and distribution requirements. But Gynuity went further than the FDA officially allowed, shipping abortion drugs overnight to women’s homes after an online consultation, getting around regulations for i- person dispensing of the drugs by doing this as part of a federally-approved “study.”

The aim of the “study” was to pave the way for online ordering and abortion by mail throughout the country, especially for women in states where “abortion access” was legally limited or regulations had closed a large proportion of traditional abortion clinics.

The clear aim is to be able to maintain or even boost abortion numbers (or in the parlance of abortion advocates, “access”) even if laws change or clinics close. It was also to prepare the way for these “self-managed” Do-It-Yourself (DIY) at home abortions when and if the FDA dropped safety regulations limiting distribution of the drugs to in-person encounters.

UNITED STATES ABORTION NUMBERS

Using the pandemic to open the door to abortions at home

Though efforts to get the FDA to drop regulations on mifepristone had been going on for years, advocates seized the pandemic as an opportunity to argue that women needed to be able to order these online and have them delivered at home, supposedly to avoid having to expose themselves to the virus at clinics.

Attorneys general from 21 states made such a request to the FDA in March of 2020 and joined in a lawsuit in June with various pro-abortion groups to try to force the FDA to suspend its regulations on the drug. Though a federal judge in July 2020 agreed and told the FDA to allow prescription by telemedicine (prompting the creation of several new online abortion pill prescribers), the Supreme Court later in January 2021 sustained the authority of the FDA to impose its regulations.

That all changed with the inauguration of Joe Biden. Almost immediately, the Biden administration announced that it would not be enforcing the FDA's safety regulations on mifepristone, essentially allowing women to order abortion pills online and administer them to themselves after they are delivered to their homes. Officially, the suspension of these regulations is to last only as long as the pandemic, but the Biden FDA has pledged to consider dropping these regulations entirely in the coming months.

On December 16, 2021, the FDA announced that it was permanently dropping the requirement that women had to pick up their abortion pills in person from the clinic, hospital, or doctor's office where they ordered them. And pharmacies were added to the list of acceptable prescribers. The FDA maintained, however, requirements that, to get and prescribe the pills, each of these health care providers still had to certify that they had read and understood the instructions and risks and would share them with their patients. Also, that they had the ability to date pregnancies to determine gestational age (since failure and complications increase the farther along the mother and baby are) and could screen for ectopic pregnancy (the pills don't work when the child has implanted outside the womb). In essence, though, this meant that women, after answering a few questions on a brief telemedical conference on their computer, could have abortion pills shipped to their homes by overnight mail.

The CDC does not have data yet for the number of chemical or "medication" abortions for 2020, when the pandemic started, and will not have full data on abortions in 2021 for a number of years yet. But publicity and heavy promotion of telemedicine by abortion groups and the government's authorization of online sales and at-home delivery of these abortion drugs, with use accelerating when regulations are relaxed, the numbers could go through the roof, further reversing what had been a long-term sustained decline.

“““ This would fulfill the fantasies of the abortion lobby, revitalizing an industry that saw a chance to boost sagging sales with a new product and new image as the "easy, safe, and simple" alternative to surgical abortion.

It may take some time for women to cut through all the hype and find out that these abortions are still abortions, still bloody, still painful, and a lot riskier than advertised. It is only hoped that they will find out before it is too late that, once again, the abortion industry has sold them a bill of goods, taking their money, taking their progeny, abandoning them and leaving them empty inside.

THE POST-ROE LANDSCAPE

An Examination of Existing Laws

With ongoing court action surrounding a Texas law protecting unborn children once a fetal heartbeat can be detected, and this summer's anticipated decision by the U.S. Supreme Court in *Dobbs v. Jackson Women's Health Organization* about Mississippi's Gestational Age Act protecting unborn children after 15 weeks, there is much speculation in the press and among pro-abortion groups about the future of *Roe v. Wade* and the post-*Roe* landscape in the nation.

While we are still awaiting a final decision from the Court in the *Dobbs* case, media outlets have opined about the landscape in the event of *Roe*'s downfall. Adding to this national conversation are numerous public opinion polls that purport to find that a majority of Americans oppose the Supreme Court overturning *Roe v. Wade*. These polls have helped pro-abortion organizations continue unabated with their decades-long public relations campaign that *Roe v. Wade* is somehow sacrosanct.

However, according to a poll conducted for Reuters/Ipsos December 13-17, 2021 (n=4047 with a margin of error of +/- 2.5%), more than two-thirds of Americans don't realize what would happen if *Roe* were overturned. Respondents were asked, "To the best of your knowledge, which of the following would happen if the Supreme Court overturned *Roe v. Wade*?"

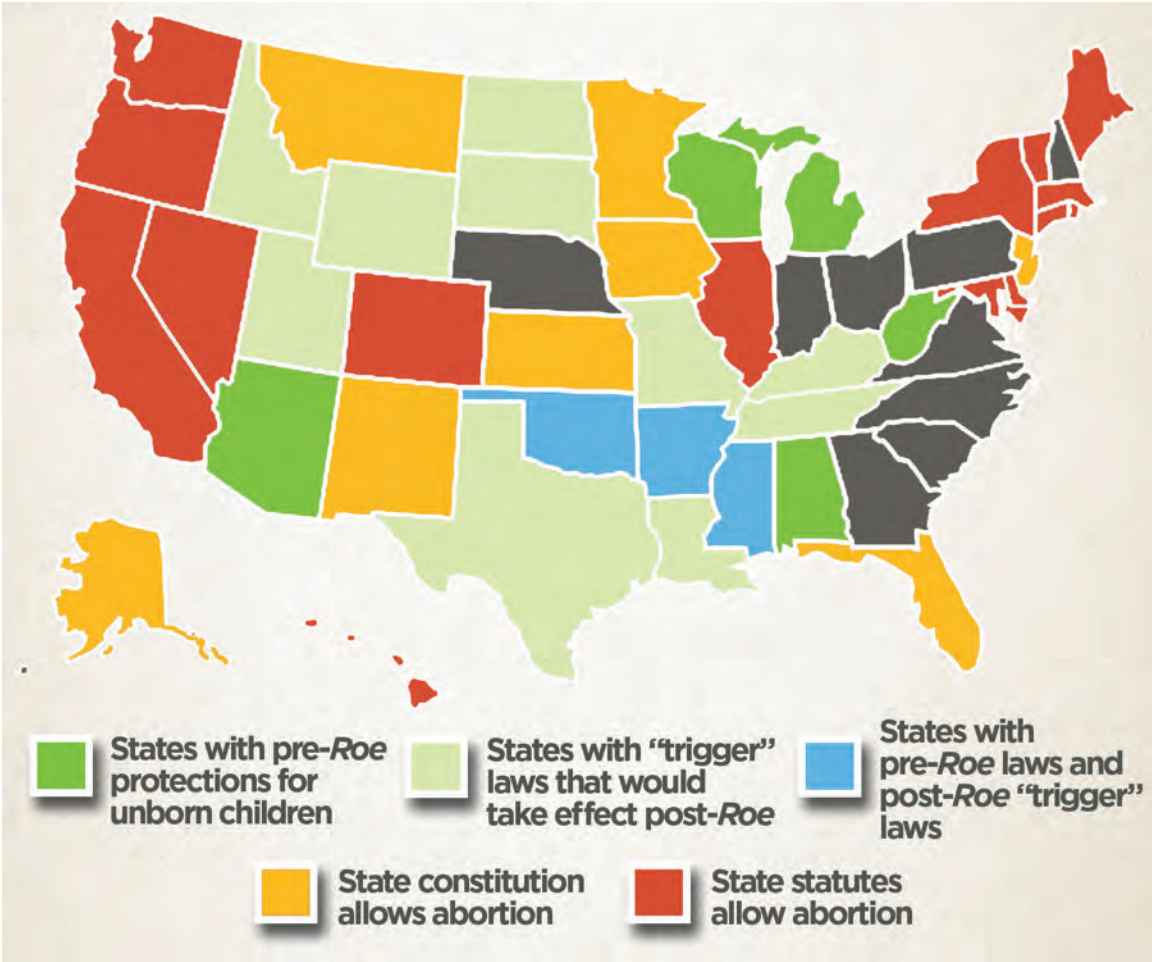
Sixteen percent believed "abortion would become illegal in the United States immediately;" 28% believed "abortions would become mostly illegal." Twenty-four percent didn't know or didn't respond. Just 32% accurately said "laws governing abortion would be made at the state level, allowing for it to remain legal in some states and become illegal in others."

While most pro-abortion organizations adopt a "sky is falling" stance claiming that if *Roe* were overturned by the Court, abortion would be illegal in a majority of the country, the reality is actually more complicated.

Some states have laws protecting unborn children that predate *Roe v. Wade*; other states have taken steps to pass "trigger laws" that would become effective to protect unborn children in the event of *Roe*'s reversal. A plurality of states, either by state court decision or legislative action, would allow abortion on demand within their borders.

The map on the back of this page details the possible landscape in the United States in a post-*Roe* society. While there are protective pro-life laws in many states that would be in effect (or go into effect) if *Roe* were reversed, far too many states would become abortion "safe havens," continuing to put mothers and their children at risk by allowing unrestricted abortion on demand.

THE POST-ROE LANDSCAPE



A total of 18 states would protect unborn children immediately in a post-*Roe* landscape through either existing pre-*Roe* laws, “trigger” laws that would take effect following *Roe*’s reversal, or both: Alabama, Arizona, Arkansas, Idaho, Kentucky, Louisiana, Michigan, Mississippi, Missouri, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Utah, West Virginia, Wisconsin, and Wyoming.

Twenty-three states would allow abortion either through legislatively-enacted statute or court ruling interpreting the state constitution to convey the right to abortion: Alaska, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Montana, New Jersey, New Mexico, New York, Nevada, Oregon, Rhode Island, Vermont, and Washington.

Some pro-life laws currently exist in Indiana, Nebraska, New Hampshire, Ohio, Pennsylvania, and Virginia that may possibly provide some immediate protection for unborn children and their mothers, but have no explicit prohibitions of abortion. Georgia currently has an enjoined law that protects unborn children once the fetal heartbeat has been detected. Georgia leadership could seek to remove the injunction on the law post-*Roe*. Idaho has a similar heartbeat law with a “trigger” mechanism.

Kansas and Kentucky are currently advancing ballot initiatives that would insert language which excludes abortion into their respective constitutions. Michigan is currently advancing a ballot initiative to enshrine abortion in the state constitution.

THE HYDE AMENDMENT

Background and History



After *Roe v. Wade* was handed down in 1973, various federal health programs, including Medicaid, simply started paying for elective abortions. On September 30, 1976, an amendment by pro-life Congressman Henry Hyde (R-Ill.) to prevent federal Medicaid funds from paying for abortions was enacted. The Hyde Amendment is widely recognized as having a significant impact on the number of abortions in the United States saving an estimated two million American lives.¹ We believe that the Hyde Amendment has proven itself to be the greatest domestic abortion-reduction measure ever enacted by Congress.

A Brief History of the Hyde Amendment

Federal funding of abortion became an issue soon after the U.S. Supreme Court, in its 1973 ruling in *Roe v. Wade*, invalidated the laws protecting unborn children from abortion in all 50 states. The federal Medicaid statutes had been enacted years before that ruling, and the statutes made no reference to abortion, which was not surprising, since criminal laws generally prohibited the practice. Yet by 1976, the federal Medicaid program was paying for about 300,000 elective abortions annually,² and the number was escalating rapidly.³ If a woman or girl was Medicaid-eligible and wanted an abortion, then abortion was deemed to be “medically necessary” and federally reimbursable.⁴ It should be emphasized that “medically necessary” is, in this context, a term of art – it conveys nothing other than that the woman was pregnant and sought an abortion from a licensed practitioner.⁵

1. Michael J. New, Ph.D., Hyde @ 40 ANALYZING THE IMPACT OF THE HYDE AMENDMENT (https://s27589.pcdn.co/wp-content/uploads/2016/09/OP_hyde_9.28.3.pdf)

2. Statement of the Department of Health, Education and Welfare, “Effects of Sec. 209, Labor-HEW Appropriations Bill, H.R. 14232,” June 25, 1976.

3. The 1980 CQ Almanac reported, “With the Supreme Court reaffirming its decision [in *Harris v. McRae*, June 30, 1980] in September, HHS ordered an end to all Medicaid abortions except those allowed by the Hyde Amendment. The department, which once paid for some 300,000 abortions a year and had estimated the number would grow to 470,000 in 1980 . . .” In 1993, the Congressional Budget Office, evaluating a proposed bill to remove limits on abortion coverage from Medicaid and all other then-existing federal health programs, estimated that the result would be that “the federal government would probably fund between 325,000 to 675,000 abortions each year.” Letter from Robert D. Reischauer, director, Congressional Budget Office, to the Honorable Vic Fazio, July 19, 1993.

That is why it was necessary for Congressman Henry Hyde to offer, beginning in 1976, his limitation amendment to the annual Health and Human Services appropriations bill, to prohibit the use of funds that flow through that annual appropriations bill from being used for abortions. In a 1980 ruling (*Harris v. McRae*), the U.S. Supreme Court ruled, 5-4, that the Hyde Amendment did not contradict *Roe v. Wade*.

The pattern established under Medicaid prior to the Hyde Amendment was generally replicated in other federally-funded and federally-administered health programs. In the years after the Hyde Amendment was attached to LHHS appropriations, the remaining appropriations bills as well as other government programs went entirely unaffected and continued to pay for abortions until separate laws were passed to deal with them. Where general health services have been authorized by statute for any particular population, elective abortions ended up being funded, unless and until Congress acted to explicitly prohibit it.

In later years, as Medicaid moved more into a managed-care model, the Hyde Amendment was expanded to explicitly prohibit any federal Medicaid funds from paying for any part of a health plan that covered abortions (with narrow exceptions). Thus, the Hyde Amendment has long prohibited not only direct federal funding of abortion procedures, but also federal funding of plans that include abortion coverage.

There is abundant empirical evidence that where government funding for abortion is not available under Medicaid or the state equivalent program, at least one-fourth of the Medicaid-eligible women carry their babies to term, who would otherwise procure federally-funded abortions. Some pro-abortion advocacy groups have claimed that the abortion-reduction effect is substantially greater – one-in-three, or even 50 percent⁶

What the Hyde Amendment Does (and Does Not) Cover

The Hyde Amendment is NOT a government-wide law, and it does NOT always apply automatically to proposed new programs.

The Hyde Amendment is a limitation that is attached annually to the appropriations bill that includes funding for the Department of Health and Human Services (DHHS), and it applies only to the funds contained in that bill. (Like the annual appropriations bill itself, the Hyde Amendment expires every September 30, at the end of every federal fiscal year. The Hyde Amendment will remain in effect only for as long as the Congress and the President re-enact it for each new federal fiscal year.)

4. As the Sixth Circuit Court of Appeals explained it: “Because abortion fits within many of the mandatory care categories, including ‘family planning,’ ‘outpatient services,’ ‘inpatient services,’ and ‘physicians’ services,’ Medicaid covered medically necessary abortions between 1973 and 1976.” [*Planned Parenthood Affiliates of Michigan v. Engler*, 73 F.3d 634, 636 (6th Cir. 1996)]

5. It has long been understood and acknowledged by knowledgeable analysts on both sides of abortion policy disputes that “medically necessary abortion,” in the context of federal programs, really means any abortion requested by a program-eligible woman. For example: In 1978, Senator Edward Brooke (R-Mass.), a leading opponent of the Hyde Amendment, explained, “Through the use of language such as ‘medically necessary,’ the Senate would leave it to the woman and her doctor to decide whether to terminate a pregnancy, and that is what the Supreme Court of these United States has said is the law.

6. “Discriminatory Restrictions on Abortion Funding Threaten Women’s Health,” NARAL Pro-Choice America Foundation factsheet, January 1, 2010, citing Rachel K. Jones et al., *Patterns in the Socioeconomic Characteristics of Women Obtaining Abortions in 2000-2001*, *Persp. on. Sexual & Reprod. Health* 34 (2002).

THE HYDE AMENDMENT

The current Hyde Amendment text reads in part⁷:

Sec. 506. (a) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for any abortion. (b) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for health benefits coverage that includes coverage of abortion. (c) The term “health benefits coverage” means the package of services covered by a managed care provider or organization pursuant to a contract or other arrangement.

Sec. 507. (a) The limitations established in the preceding section shall not apply to an abortion—
(1) if the pregnancy is the result of an act of rape or incest; or
(2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

The Hyde Amendment is sometimes referred to as a “rider,” but in more correct technical terminology it is a “limitation amendment” to the annual appropriations bill that funds the Department of Health and Human Services and a number of smaller agencies. A “limitation amendment” prohibits funds contained in a particular appropriations bill from being spent for a specified purpose. The Hyde Amendment limitation prohibits the spending of funds within the HHS appropriations bill for abortions (with specified exceptions). It does not control federal funds appropriated in any of the other 11 annual appropriations bills, nor any funds appropriated by Congress outside the regular appropriations process. [However, because of an entirely separate statute enacted in 1988, the HHS policy is automatically applied as well to the Indian Health Service.]

That is why it has been necessary to attach funding bans to other bills to cover the programs funded through other funding streams (e.g. international aid, the federal employee health benefits program, the District of Columbia, Federal prisons, Peace Corps, etc.). Together these various funding bans form a patchwork of policies that cover most federal programs and the District of Columbia, but many of these funding bans must be re-approved every year and could be eliminated at any time.

Some examples of programs currently covered by the Hyde Amendment policy:

- Medicaid (75 million) and Medicare (67 million), and other programs funded through the Department of Health and Human Services.
- The Federal Employees Health Benefits Program (covering 9 million federal employees) prevents the use of federal funds for “the administrative expenses in connection with any health plan... which provides any benefits or coverage for abortions.” Federal employees may choose from a menu of dozens of private health plans nationwide, but each plan offered to these employees must exclude elective abortions because federal funds help pay the premiums.
- State Children’s Health Insurance Program (SCHIP) prohibits the use of federal funds “to assist in the purchase, in whole or in part, of health benefit coverage that includes coverage of abortion” (42 USC§1397ee(c)(7)).

⁷ www.nrlc.org/uploads/ahc/ProtectLifeActDouglasJohnsonTestimony.pdf, and www.nrlc.org/uploads/DvSBA/GenericAffidavitOfDouglasJohnsonNRLC.pdf.

THE HYDE AMENDMENT

The 2010 Obamacare health law ruptured longstanding policy. Among other objectionable provisions, the Obamacare law authorized massive federal subsidies to assist many millions of Americans to purchase private health plans that will cover abortion on demand. The Patient Protection and Affordable Care Act (PPACA) allows premium assistance credits under PPACA to be directed to health insurance coverage that includes abortion, where a state has not specifically banned it.⁸

The PPACA also created multiple new streams of federal funding that are “self-appropriated” — that is to say, they flow outside the regular funding pipeline of future DHHS appropriations bills and therefore would be entirely untouched by the Hyde Amendment.⁹

Government agencies receive funds from many sources, but once they are received by the government they become federal funds. If such funds are transmitted to abortionists to pay for abortions or to plans that pay for abortions, that constitutes federal funding for abortion.

When a federal program pays for abortion or subsidizes health plans that cover abortion, that constitutes federal funding of abortion — no matter what label is used. The federal government collects monies through various mechanisms, but once collected, they become public funds — federal funds.

Further, there is not a meaningful distinction to how the funds are dispersed once they become federal funds — be it towards a direct payment for health coverage or in the form of tax credits (which may or may not be paid in advance, or simply count against tax liability — which does not always exist). Additionally, there is no meaningful distinction to whom the funds are paid, be it to individual, an employer covering health cost, or to another covering entity. When government funds are expended to pay for abortions or to plans that pay for abortions, that constitutes federal funding for abortion.

8. The PPACA §1303(a)(1) 42 U.S.C. 18023 allows individual states to pass legislation to keep abortion out of the health plans that participate in the exchanges. But, even where a state does this (as about half have done), it does not address the other fundamental problems with the PPACA – and the taxpayers in such a state will still be paying to subsidize abortion-covering insurance plans in other states, and the other abortion-expanding components of the law.

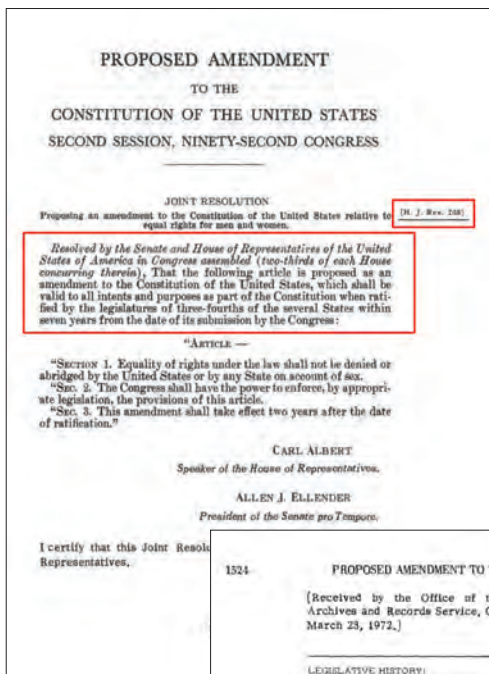
9. Public Law 116-94, Division A, Title V, General Provisions

THE EQUAL RIGHTS AMENDMENT

An In-Depth Special Report

Pro-abortion groups, seeking a replacement for *Roe v. Wade*, are now openly joining in the campaign to jam the long-expired 1972 ERA into the U.S. Constitution

Organizations that advocate for the Equal Rights Amendment (ERA), as well as major pro-abortion advocacy groups, now loudly proclaim what for decades they denied or deflected: If the ERA becomes part of the federal Constitution, they will employ it as a constitutional replacement for *Roe v. Wade* — i.e., as a legal weapon to invalidate virtually all state and federal limits on abortion, and to require funding of elective abortion at all levels of government.



However, in this endeavor they are faced with a number of difficulties. Chief among them this: The ERA died on March 22, 1979, having failed to win ratification from the required 38 state legislatures before a deadline that had been included by Congress in the original ERA resolution submitted to the states in March, 1972.

The seven-year ratification deadline was a legislative compromise that allowed ERA advocates, after decades of failure, to get the measure approved by the required two-thirds votes in the U.S. House of Representatives and the U.S. Senate during the 92nd Congress (1971-1972). ERA advocates now have far

less support in Congress than was the case in 1972. Rather than seeking compromise on amendment language or otherwise seeking consensus, they have mounted a concerted attack on the integrity of the constitutional amendment process. After winning adoption of “ratification” resolutions from the legislatures of Nevada (2017),

Illinois (2018), and Virginia (2020), they now insist that the deadline was unconstitutional, and/or that it can be removed *retroactively* by the current Congress (or, it seems, by any future Congress).

Early in 2021, the biggest pro-ERA advocacy group, the ERA Coalition, proclaimed “2021: The Year of the ERA.” However, objectively, 2021 was not a good year for the ERA-resuscitation movement. They failed to pick up any new supporters among Republican members of the U.S. Senate, and therefore remain far short of the 60 supporters they’d need to pass a measure that they assert (erroneously) would ensure that the ERA will be recognized as part of the Constitution. They have continued to lose lawsuits in federal courts before federal judges of every stripe; during 2021, the judges voting against the ERA-revival litigants were appointed by Democratic presidents 7 to 1. Moreover, the ERA-advocacy groups have so far been

THE EQUAL RIGHTS AMENDMENT

unsuccessful in their demands that key Executive Branch officials disregard those adverse court rulings and engage in irregular actions to declare that the ERA is already part of the Constitution.

Nevertheless, ERA-advocacy groups are having considerable success peddling a strikingly different picture to the mainstream news media. In their public relations construct, ERA backers are on the cusp of total victory after a 50-year struggle (or a 99-year struggle). According to this concocted political narrative, the ERA has already met all the conditions required to be part of the Constitution, and at most a small number of recalcitrant officeholders in Congress and/or the Executive Branch must be persuaded to recognize it.

Examples: Linda Coberly, chair of the Legal Task Force of the ERA Coalition, in letter published in *The New York Times* on August 14, 2021, wrote, “In light of the continuing efforts in Congress and the courts, the E.R.A...is alive and well.” House Speaker Nancy Pelosi (D-CA) said on November 16, 2021, that the ERA was on “the cusp of being enshrined into the Constitution.” ERA Coalition President Carol Jenkins asserted in a November 12, 2021 fundraising solicitation, “We are just 2.5 months away from being able to add the Equal Rights Amendment to the Constitution on January 27, 2022. There are only two things standing in our way — the Senate and the Department of Justice.”

Kamela Lopez, president of another major ERA-advocacy group, Equal Means Equal, even suggested that government officials are engaged in “criminality” and “crime” in failing to somehow make the ERA happen. (October 28, 2021) “The will of the people is being stolen from us in slow motion before our very eyes,” resulting in a “constitutional crisis,” the group said in an alert issued on January 23, 2022.

If the rule of law prevails, this unprecedented campaign to air-drop a failed amendment into the text of the Constitution will not succeed. Still, given the number of centers of political power that are parties to the campaign, and the warm reception it is receiving in many quarters of the news-entertainment industry, the political construct that the ERA as “almost there” is likely to achieve unprecedented visibility during 2022.

“The ERA-cannot-die movement has run up an unbroken 40-year losing streak in the courts, before federal judges of every political stripe,” said Douglas Johnson, who oversaw NRLC’s opposition to the ERA during his long tenure as NRLC Federal Legislative Director (1981-2016), and who continues to do today as director of NRLC’s *ERA Project*. Johnson recently updated [an article](#)¹ distilling all federal lawsuits dealing with the status of the ERA, from 1981 to date.

**EQUAL RIGHTS AMENDMENT - PROPOSED MARCH 22, 1972
LIST OF STATE RATIFICATION ACTIONS**

The following dates reflect the date of the state legislature's passage, the date of filing with the Governor or Secretary of State, or the date of certification by the Governor or Secretary of State, whichever is the earliest date included in the official documents sent to the NARA, Office of the Federal Register. (Updated as of: 03/24/2020)

STATE	RATIFICATION	STATE	RATIFICATION
Alabama	not ratified	Montana	Jan. 25, 1974
Alaska	April 5, 1972	Nebraska*	March 29, 1972
Arizona	not ratified	Nevada**	March 22, 2017
Arkansas	not ratified	New Hampshire	March 23, 1972
California	Nov. 13, 1972	New Jersey	April 17, 1972
Colorado	April 21, 1972	New Mexico	Feb. 28, 1973
Connecticut	March 15, 1973	New York	May 18, 1972
Delaware	March 23, 1972	North Carolina	not ratified
Florida	not ratified	North Dakota	Feb. 3, 1975
Georgia	not ratified	Ohio	Feb. 7, 1974
Hawaii	March 22, 1972	Oklahoma	not ratified
Idaho*	March 24, 1972	Oregon	Feb. 8, 1973
Illinois**	May 30, 2018	Pennsylvania	Sept. 26, 1972
Indiana	Jan. 24, 1977	Rhode Island	April 14, 1972
Iowa	March 24, 1972	South Carolina	not ratified
Kansas	March 28, 1972	South Dakota*	Feb. 5, 1973
Kentucky*	June 27, 1972	Tennessee*	April 4, 1972
Louisiana	not ratified	Texas	March 30, 1972
Maine	Jan. 18, 1974	Utah	not ratified
Maryland	May 26, 1972	Vermont	March 1, 1973
Massachusetts	June 21, 1972	Virginia**	January 27, 2020
Michigan	May 22, 1972	Washington	March 22, 1973
Minnesota	Feb. 8, 1973	West Virginia	April 22, 1972
Mississippi	not ratified	Wisconsin	April 26, 1972
Missouri	not ratified	Wyoming	Jan. 26, 1973

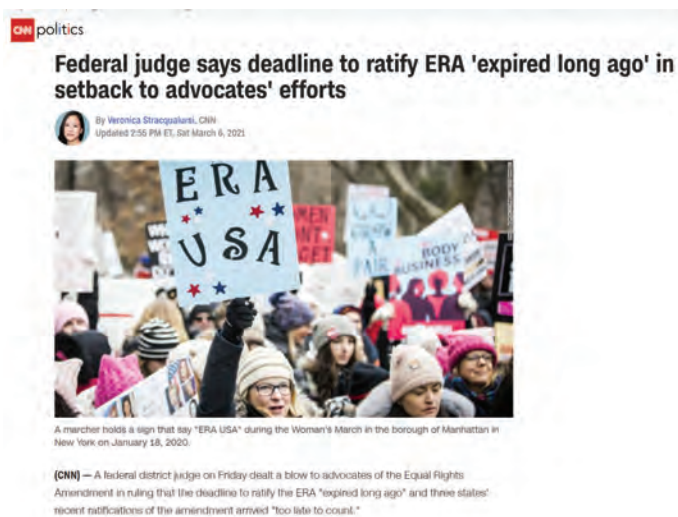
*** Purported Rescission**

Nebraska	March 15, 1973
Tennessee	April 23, 1974
Idaho	Feb. 8, 1977
Kentucky	March 20, 1978
South Dakota	March 5, 1979

** Ratification actions occurred after Congress's deadline expired. See U.S. Dept. of Justice, Office of Legal Counsel, *Ratification of the Equal Rights Amendment*, 44 Op. O.L.C. ___, Slip Op. (Jan. 6, 2020).

[1] <https://www.nrlc.org/uploads/era/FederalJudgesScornERAResuscitation.pdf>

THE EQUAL RIGHTS AMENDMENT





"This [the Equal Rights Amendment] has nothing to do with the abortion issue."

-Speaker Nancy Pelosi, on the floor of the U.S. House of Representatives February 13, 2020

In a letter to the U.S. House of Representatives (March 16, 2021), the ACLU said: "The Equal Rights Amendment could provide an additional layer of protection against restrictions on abortion... [it] could be an additional tool against further erosion of reproductive freedom..."

If the mask came off fully in 2021, it had been slipping for years. For example, as early as 2015 the National Organization for Women had circulated a monograph making numerous sweeping claims about the hoped-for pro-abortion legal effects of the ERA — stating, for example, that "an ERA — properly interpreted — could negate the hundreds of laws that have been passed restricting access to abortion care . . ."

In a national alert sent out on March 13, 2019, NARAL Pro-Choice America asserted that "the ERA would reinforce the constitutional right to abortion . . . [it] would require judges to strike down anti-abortion laws . . ."

The Associated Press on January 1, 2020 reported that Emily Martin, general counsel for the National Women's Law Center, "affirmed that abortion access is a key issue for many ERA supporters; she said adding the amendment to the Constitution would enable courts to rule that restrictions on abortion 'perpetuate gender inequality.'" Later that month, national AP reporter David Crary wrote, "Abortion-rights supporters are eager to nullify the [ERA ratification] deadline and get the amendment ratified so it could be used to overturn state laws restricting abortion." (January 21, 2020).

Pete Williams of NBC News reported (Jan. 30, 2020), "The ERA has been embraced by advocates of abortion rights. NARAL Pro-Choice America has said it would 'reinforce the constitutional right to abortion' and 'require judges to strike down anti-abortion laws.' Abortion opponents agree... 'It would nullify any federal or state restrictions, even on partial-birth or 3rd-trimester abortions,' [said] National Right to Life."

Increasingly, abortion advocates have stressed that having actual text in the Constitution could provide a legal foundation for "abortion rights" more secure and *even more expansive* than those achieved under past Supreme Court rulings. *The Daily Beast* (July 30, 2018) reported remarks by Jennifer Weiss-Wolf, vice president of the Brennan Center for Justice: "Both the basis of the privacy argument and even the technical, technological underpinnings of [*Roe*] always seemed likely to expire. ... Technology was always going to move us to a place where the trimester framework didn't make sense. ... If you were rooted in an equality argument, those things would not matter."

In 1983 and since, National Right to Life has expressed strong opposition to any federal ERA, unless an "abortion-neutralization" amendment is added, which would state: "Nothing in this Article [the ERA] shall be construed to grant, secure, or deny any right relating to abortion or the funding thereof." ERA proponents have vehemently rejected such a modification to any "start over" ERA.

THE EQUAL RIGHTS AMENDMENT

Kate Kelly, a prominent pro-ERA activist attorney, who in 2021 was hired by Congresswoman Maloney as a counsel to the U.S. House of Representatives Committee on Oversight and Reform, when asked on January 24, 2021 whether the ERA would “codify *Roe v. Wade*,” answered, “My hope is that what we could get with the ERA is FAR BETTER than *Roe*.”

In addition to such predictive statements, ERAs that have been added to various state constitutions, containing language nearly identical to the proposed federal ERA, *have actually been used* as powerful pro-abortion legal weapons. For example, the New Mexico Supreme Court in 1998 unanimously struck down a state law restricting public funding of elective abortions, solely on the basis of the state ERA, in a lawsuit brought by affiliates of Planned Parenthood and NARAL. (*New Mexico Right to Choose v. Johnson*).

At this writing, the Women’s Law Project, in alliance with Planned Parenthood, has a lawsuit appeal pending before the Pennsylvania Supreme Court, arguing that a limitation on state funding of elective abortion violates the Pennsylvania ERA. (*Allegheny Reproductive Health Center vs. Pennsylvania Dept. of Human Services*) The groups have asserted that a 1986 state supreme court decision that held otherwise should be overturned as “contrary to a modern understanding” of an ERA. Briefs in support of this ERA-equals-abortion doctrine have been filed by many groups, including the Columbia Law School ERA Project, which argued that the abortion-funding limitation is “disparate treatment on the basis of sex,” to the detriment of “pregnant people,” and perpetrates “odious sex-stereotyping.”

[Additional evidence of the ERA-abortion connection is available in a footnoted [factsheet](#)⁴ on the National Right to Life website.]

How We Got to this Place on the Equal Rights Amendment

Article V of the Constitution spells out two possible methods of amending the Constitution, only one of which has ever been employed: Congress, by a two-thirds vote of each house, submits a proposed constitutional amendment text to the states, with that text always preceded by a “Proposing Clause” specifying the “mode of ratification” (e.g., instructing the states to consider the proposal either in their state legislatures, or in specially called state conventions). If three-quarters of the states (currently, 38) ratify the amendment, it becomes part of the Constitution.

POST-DISPATCH

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MONDAY, OCTOBER 4, 1982

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St. Louis school board has supported city-county desegregation efforts. Rava called the action “the crowning result and conclusion of a long series of precedents. The Supreme Court has denied (review) . . . of the case at least three times. It is very important to the orderly dispatch of the . . . ing aspects of the case.”
t said he was “very at the decision but added in no way undermines . . . mination of the state . . . on in the court
Page 8

Supreme Court Declares ERA Issues Legally Dead

WASHINGTON (UPI) — The Supreme Court today closed the coffin lid on the 10-year-old Equal Rights Amendment. The court declared the amendment legally dead and refused to rule on questions raised about the ratification process. The justices dismissed a case over a federal court ruling that upheld Idaho’s revocation of its earlier approval of the ERA. They declared the issues “moot” — no

longer presenting a live controversy. The court had temporarily blocked the ruling in January. Today, it wiped the decision off the books so that it could not serve as a precedent. The amendment was adopted by Congress in March 1972. It officially died on June 30, when the amendment gained approval of only 35 states. This was 3 states See COURT, Page 8

[4] <https://www.nrlc.org/uploads/era/ERA-AbortionQuotesheet3-5-20.pdf>



The Baltimore Sun
November 16, 1983
(Associated Press
dispatch)

A dour-looking Representative Patricia Schroeder (D, Colo.) and Representative Peter W. Rodino, Jr. (D, N.J.), supporters of the equal rights amendment, talk to reporters after the defeat.

House falls six votes short of bringing back the ERA

Washington (AP) — The House of Representatives spurned impassioned pleas from the Democratic leadership yesterday and rejected a revival of the proposed equal rights amendment on a vote that fell six short of the required two-thirds majority.

The 278-147 tally followed last-minute threats by women's rights advocates and their opponents in the anti-abortion movement to judge lawmakers at the ballot box next year solely by their votes on the issue.

Voting for the ERA were 225 Democrats and 53 Republicans, while 109 Republicans and 38 Democrats opposed it.

The proposed constitutional amendment, which reads simply that "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex," has twice cleared Congress but fell three states short of ratification — with 38 needed by last year's deadline.

The ERA went down this time after Republicans assailed the Democratic leadership for trying to railroad the legislation without giving members a chance to amend it and with only 40 minutes of debate.

The lawmakers rejected a final appeal by House Speaker Thomas P. O'Neill Jr. (D, Mass.), who urged support for the ERA without an anti-abortion rider "in fairness to the women of America."

Representative Hamilton Fish, Jr. (R, N.Y.) said after the vote that he would reintroduce the ERA and seek to have it considered later this week under a rule permitting full debate and amendments.

The spectator galleries were nearly filled with supporters of women's groups favoring the ERA, and backers of anti-abortion organizations opposing it without the rider. Lobbyists for both sides worked furiously in the final hours in their attempts to sway votes.

"We are outraged once again that it failed," said Sally Rosloff, president of the Los Angeles chapter of the National Organization for Women. "But we are pleased that we do have a vote with House members on record for or against women's equality. With

this on record, we can plan our strategy for 1984 accordingly."

Until Mr. O'Neill approved the shortcut, Representative F. James Sensenbrenner, Jr. (R, Wis.) stood ready to introduce an amendment that would have ensured continuation of laws restricting government financing of abortions to cases where a woman's life is endangered. Such anti-abortion measures are known as "Hyde amendments," after Representative Henry J. Hyde (R, Ill.).

Mr. Sensenbrenner also planned to offer an amendment that would have prevented use of the ERA to draft women and send them into combat.

Mr. O'Neill said without the no-amendment rule, the anti-abortion forces likely would have won.

He told the House, "In fairness to women of America, the thing to do is send a lean, clean package" to the Senate. He told those saying they would vote against ERA because of the rule, "In your hearts you were never with us. You were looking for an escape."

But Representative Marilyn Lloyd Bouquard (D, Tenn.) accused her own party leadership of ignoring concerns that will be raised in state legislatures. "If we fail to deal with the issues now, we will sow the seeds of confusion. Let's not settle for a meaningless victory on a hollow symbol."

And Representative Michael DeWine (R, Ohio) added that, without amendments on abortion and women in combat, "This ERA is dead. If you want to put it in the Constitution, vote no."

Maryland's House delegation of five men and three women voted solidly in favor of the equal rights amendment. But for Beverly B. Byron it was a last-minute decision.

The Western Maryland Democrat never had to vote on the issue before and had never taken a position. Even her staff could not predict which way she would go.

She explained it was "upsetting" that the equal rights vote had become symbolically entwined with the questions of abortion and combat roles for women in the military — though the amendment addresses neither issue. She said she also has "problems" with constitutional amendments generally.

As one of the last House members to cast her vote, Mrs. Byron joined the ERA supporters, she said, because, "Sooner or later you've finally got to make your mind up."

Maryland was one of the first states to ratify the first federal ERA, in 1972, and also added an Equal Rights Amendment to the state Constitution that year.

Mrs. Byron said, however, that she suspects a majority of her constituents in the mountainous and rural west oppose the notion.

Mr. O'Neill told reporters he scheduled the vote "at the insistence of women's organizations who want to find out who their friends are."

"That's the vote people are going to look at," Mary Jean Collins, a vice president of the National Organization for Women, said before the roll call. "NOW's political activity will be based at least partially on how people vote" on the ERA.

Doug Johnson, legislative director of the National Right to Life Committee, said, "I'm not prepared to say how exactly it's going to be defined with respect to individual candidates, but it's a weightier vote than a vote on the Hyde amendment, because it could invalidate all Hyde amendments, past, present and future."

Various versions of the Equal Rights Amendment were introduced in Congress beginning in 1923, but for decades failed to win the necessary two-thirds approval by both houses during any single Congress. ERA proponents finally succeeded during the 92nd Congress (1971-1972) — but only after they reluctantly accepted a seven-year ratification deadline. ("Proponents eventually relented and inserted a seven-year time limit," noted federal Judge Rudolph Contreras in a March 2021 ruling upholding the ratification deadline.) The deadline — as for every successful constitutional amendment proposed since 1960 — was placed in the Proposing Clause (which is not a "preamble," but a constitutionally required element of every constitutional amendment submission).

Many state legislatures ratified the ERA quickly and with little debate. Twenty-two state legislatures ratified by the end of 1972 (that is, before the U.S. Supreme Court handed down its *Roe v. Wade* ruling invalidating the abortion laws of all 50 states, in January 1973). Twelve more states ratified the ERA before government funding of abortion became a volatile national issue in 1976. According to federal Judge Contreras, "25 of the 35 states that ratified the ERA by 1977 voted on an instrument of ratification that quoted Congress's joint resolution in its entirety [including the deadline]. 5 other states...referenced its 7-year deadline."

As the March 22, 1979 deadline approached, the ERA was three states short of the required 38 state ratifications — and four of the states that had ratified during an initial rush had rescinded their ratifications. Under pressure from pro-ERA groups, in 1978 Congress passed a resolution — by simple majority

votes — that purported to extend the deadline for 39 months. Many members of Congress, and many constitutional experts, criticized the ostensible deadline extension as clearly unconstitutional. The only federal court to consider the matter ruled that the deadline extension was unconstitutional (and that rescissions were valid), but no additional states ratified during the 39-month pseudo-extension, so in 1982 the Supreme Court declared that the entire controversy was moot. The 1972 ERA was dead.

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In 1983, a top priority of the Democratic majority leadership of the U.S. House of Representatives was restarting the constitutional amendment process for the ERA. A House Judiciary subcommittee held five hearings on a new ERA resolution (containing exactly the same language as the 1972 proposal), after which the full Judiciary Committee rejected all proposed amendments and sent the start-over ERA to the House floor. Democratic leaders and pro-ERA groups were stunned when the ERA went down to defeat on the House floor on November 15, 1983, in large part because of opposition from National Right to Life and other pro-life groups. The measure received the support of 65% of the voting House members — short of the two-thirds margin required under Article V.

The Congressional Pay Amendment (“27th Amendment”) and the Emergence of the “Three-State Strategy”

The ERA resuscitation movement began in 1992, when both the Justice Department and Congress opined that a proposal termed the “Congressional Pay Amendment” (CPA) had achieved ratification, 203 years after Congress had submitted the proposal to the states. Perhaps they were correct, although it appears that no federal court to this day has been forced to decide whether this so-called “27th Amendment” is actually part of the Constitution. The question actually has little bearing on the status of the ERA, because the CPA had no deadline attached, and no state had ever rescinded its ratification. Still, ERA advocates seized on the claimed ratification of the CPA to concoct what they called the “three-state strategy,” which rested on the assertion that the 1972 ERA was not actually dead, but only sleeping — and could still become part of the Constitution, if only three more states adopted “ratification” resolutions.

Operating on this new construct, beginning in 1994, “ratification” resolutions were proposed repeatedly in legislatures in the 15 states that had never ratified the ERA. For more than two decades — from 1994 through 2016 — none of those attempts was successful, with pro-life opposition in many instances decisive in defeating such resolutions.

Finally, in 2017, the Nevada legislature adopted such a “ratification,” followed by Illinois in 2018 and Virginia in January 2020.

The Sacramento Bee • Sunday, December 12, 1993

Pa. 4

NATION

New strategy adopted to revive ERA

By Kim I. Mills
Associated Press

WASHINGTON — Hoping to take advantage of the more supportive Clinton administration, a coalition of women's groups is trying again to pass the 70-year-old Equal Rights Amendment.

This time, feminists are adopting a tactic that at least one constitutional scholar says might work. They plan to ask Congress to nullify the 1982 deadline for ratification that had been imposed on the measure back in the 1970s.

“We are aware that it is within the prerogative of Congress to lift that expired deadline so that ratification of three additional states may be secured,” said Allie Corbin Hixson, spokeswoman for the coalition, ERA Summit. “With an administration that favors constitutional equality for women, we also believe the time is now favorable to push our suit for justice for all.”

Since the measure passed 35 of the 38 state legislatures required by the deadline, only three more states must pass it to make the amendment law, she said at a news conference in the Capitol.

“We think a concurrent resolution could be passed that says putting a deadline on the amendment was in error,” she said.

The coalition does not yet have sponsors for the proposed resolution, Hixson said.

Mary Cheh, a professor of constitutional law at George Washington University, called the strategy plausible.

Congress “put a limitation on it, they can take a limitation off it,” she said in an interview.

Equal rights proposal

Here is the text of the proposed Equal Rights Amendment:

“Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.”

“It would work in their favor if they could get a simple majority of Congress to do this,” she added. “They would be aided by the courts’ reluctance to get involved. . . . If they seize the initiative, they may prevail.”

Patricia Ireland, president of the National Organization for Women, said the 12-year Reagan-Bush era was, for women, “like being a hamster in an exercise

wheel, running as hard as we could just to stay even.”

“We are going to mobilize the movement once again around what has been the Holy Grail of the feminist movement once we won the right to vote,” she said at the news conference, in front of a statue of suffragists Susan B. Anthony, Elizabeth Cady Stanton and Lucretia Mott.

The Equal Rights Amendment was first introduced in Congress in 1923. It states simply: “Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.”

The measure failed, but it was reintroduced in 1972, and passed

both houses with a seven-year limit for ratification by at least 38 states. The deadline was extended for three years, but elapsed before enough states could pass it.

The ERA has been reintroduced in Congress every two years since but has never again won the two-thirds support needed to submit it to the states.

Hixson said the coalition will focus its efforts on the 15 states that failed to ratify the ERA by 1982. She said Virginia, which defeated the ERA by one vote, would be the next state in which there would be an attempt to pass it.

The other prime target states are Illinois, Florida, North Carolina, Oklahoma and Missouri.

Under a federal statute, when a state legislature ratifies a proposed constitutional amendment, it sends notification to the Archivist of the United States, an official nominated by the president and confirmed by the U.S. Senate. When the Archivist receives 38 valid ratifications, he publishes the amendment, which is a formal notification that new text has been added to the Constitution.

However, in the case of the ERA, the documents that had been submitted by Nevada and Illinois purported to ratify a proposal that, by its own explicit terms, had expired in 1979. Moreover, four of the states that had ratified had formally rescinded their ratifications prior to the March 1979 deadline (Nebraska, Tennessee, Idaho, and Kentucky). (A fifth state, South Dakota, on March 5, 1979, adopted a resolution stating, arguably redundantly, that its ratification was valid only until March 22, 1979.)

Faced with those impending legal issues, the Archivist in 2019 sought guidance from the Department of Justice's Office of Legal Counsel (OLC), which advises the entire Executive Branch on major legal issues. On January 6, 2020, the OLC issued a 38-page legal memo that concluded that Congress had power to include a binding ratification deadline in a constitutional amendment resolution before submitting it to the states, and that the ERA had expired unratified in 1979. The opinion said that once Congress submits a constitutional amendment proposal to the states, the role of Congress has ended – it may not retroactively modify that proposal, including any deadline. Taking note of proposals in Congress that purported to retroactively “remove” the deadline, the OLC opinion said that a later Congress lacks the power to act

retroactively in this manner, much as the current Congress lacks the power to override a veto by President Carter.

The Archivist announced that he would “abide by the OLC opinion, unless otherwise directed by a final court order.” As of this writing (January 17, 2022), the OLC opinion remains in place, and so does the public commitment from the National Archives and Records Administration that the Archivist will not certify the ERA unless so directed by “a final court order.”

On January 29, 2020, the Virginia legislature gave final approval to a resolution purporting to ratify the ERA. When the Archivist, in accord with the OLC opinion, declined to publish the ERA as part of the Constitution, the attorneys general of Virginia, Nevada, and Illinois sued in federal court in Washington, D.C., seeking to compel him to do so. Meanwhile, the Biden-Harris campaign said that if elected, “Biden will proudly advocate for Congress to recognize that 3/4 of states have ratified the amendment and take action so our Constitution [includes ERA].”

The U.S. House of Representatives also got into the act, with the leadership of the Democratic majority announcing plans to advance a resolution that purported to retroactively remove the deadline. However, three days before the measure was scheduled for a vote on the House floor, ERA advocates suffering

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a serious blow when longtime ERA champion Justice Ruth Bader Ginsburg was asked about the ERA at a public appearance at Georgetown University Law Center. In her response, Justice Ginsburg implicitly recognized both the validity of both the deadline and the potential power of states to rescind.

I would like to see a new beginning. I'd like it to start over. There's too much controversy about latecomers — Virginia, long after the deadline passed. Plus, a number of states have withdrawn their ratification. So, if you count a latecomer on the plus side, how can you disregard states that said, "We've changed our minds"?

Despite Justice Ginsburg's cautionary words, on February 13, 2020, the House of Representatives passed the measure purporting to remove the ratification deadline by a vote of 232-183 – with all voting Democrats in support, but only five out of 187 voting Republicans. The Senate, which was then under

Republican control, took no action on the measure, so it died at the end of the 116th Congress (2019-2020).

Meanwhile, in the lawsuit brought by the pro-ERA attorneys general (*Virginia v. Ferriero*), the presiding judge, Judge Rudolph Contreras (an appointee of President Obama), allowed the attorneys general of five “anti-ERA” states (Alabama, Louisiana, Nebraska, Tennessee, and South Dakota) to become “intervenor-defendants” in the case. These states argued in support of the constitutional validity of both deadlines and rescissions.



Judge M. Margaret McKeown: “Leaving aside whether any deadlines could be extended, what’s your prognosis on when we will get an Equal Rights Amendment on the federal level?”

Justice Ruth Bader Ginsburg: “I would like to see a new beginning. I’d like it to start over. There’s too much controversy about latecomers — Virginia, long after the deadline passed. Plus, a number of states have withdrawn their ratification. So, if you count a latecomer on the plus side, how can you disregard states that said, ‘We’ve changed our minds’?”

-February 10, 2020 remarks at Georgetown University Law Center

On March 5, 2021, Judge Contreras handed a major legal defeat to ERA-cannot-die advocates. Judge Contreras declined to order the Archivist to publish the ERA, observing that it would have been “absurd” to the Archivist to ignore the fact that the congressional deadline was long past; he ruled that even if the Archivist did certify the ERA, that action would have no effect on the legal status of the ERA; and he ruled (as an “alternative holding,” i.e., a separate basis for rejecting the Virginia-Nevada-Illinois claims) that the deadline was valid and that the “ratifications” by the three states came too late to count. Most of the news media ignored Judge Contreras’ ruling, but gave big coverage two weeks later to another vote in the House of Representatives, passing another a “deadline removal” resolution (H.J. Res. 17), on March 17, 2021. The vote this time was by an even closer margin than in 2020 — 222-204.

“This was ERA’s poorest showing in the House in 50 years,” said NRLC’s Douglas Johnson. “The tally was 62 votes below the two-thirds margin that the Constitution requires when Congress actually exercises its powers under Article V, as opposed to engaging in cheap theatrical performances.” (See page 33 for graphics demonstrating the precipitous drop in support for the ERA in the House of Representatives over a 50-year period, as measured in five roll call votes from 1971 through 2021.)

In the Senate, now with a razor-thin Democratic majority, Majority Leader Charles Schumer (D-NY) prevented H.J. Res. 17 from being referred to committee, holding it “at the desk,” cued up for

consideration by the full Senate. However, as of this writing (January 17, 2022), Schumer has made no attempt to force the issue. ERA-revival proponents would have to muster 60 votes to overcome the procedural barrier of the filibuster.



“Congress set deadlines for ratifying the ERA that expired long ago. Plaintiffs’ ratifications [those of Virginia, Nevada, and Illinois] came too late to count...Congress’s power to set a ratification deadline comes directly from Article V [of the Constitution]...A contrary result would be absurd.”

U.S. District Judge Rudolph Contreras (appointee of President Obama), ruling in *Virginia v. Ferriero*, March 5, 2021

2021 ERA-Related Developments in the Executive Branch

On January 7, 2021, President Biden announced that he would nominate Merrick Garland, a longtime judge of the U.S. Court of Appeals for the District of Columbia, as attorney general. Garland said publicly that he had sought and received from the President a commitment that the White House would not dictate legal positions to the Justice Department, and that he would not have accepted the job without such an assurance.

President Biden publicly affirmed that he had given Garland such an assurance. “I want to be clear to those who lead this department [about] who you serve,” President Biden said on January 7, 2021. “You won’t work for me. You are not the president or the vice president’s lawyer. Your loyalty is not to me. It’s to the law, the Constitution, the people of this nation, to guarantee justice.”

During his subsequent confirmation process in the Senate, Garland told senators that because he was still a judge at the time, he was ethically barred from answering any of the twenty ERA-related questions members of the Senate Judiciary Committee submitted to him in writing. But, Garland assured the senators, “any opinions or legal advice I might give on this subject would be based solely on the law, and not on any other consideration.” The Senate confirmed Garland on March 10, 2021, on a roll call vote of 70-30.

On June 23, 2021, the Senate Judiciary Committee conducted a hearing for President Biden’s nominee to serve as the assistant attorney general in charge of the Office of Legal Counsel, Christopher Schroeder. Sen. Charles Grassley (R-Iowa) asked Schroeder how he would approach the 2020 OLC opinion on the ERA. Schroeder noted that the Archivist had stated he would follow a final court order, and that the matter was being litigated in the federal courts. “I think we will be all best suited if we allow the litigation process to answer that question,” Schroeder said.

In a June 30, 2021 written response to another senator, Schroeder wrote, “Whenever an OLC opinion has been the subject of a judicial decision...its reasoning should inform and will be acknowledged in the Office’s subsequent analysis of the topic.”

Schroeder was confirmed as head of the Office of Legal Policy on October 28, 2021, by a roll call vote of 56-41.

What to Expect on the Equal Rights Amendment During 2022

During 2022, the ERA battle will involve all three branches of the federal government, and there will be relevant activity in some state legislatures as well.

A New Wave of Lawsuits

On or about January 27, 2022, a new wave of federal lawsuits will begin, challenging a range of local, state, and federal policies in various federal judicial circuits. These lawsuits will be based on the premise that because two years have passed since the Virginia legislature approved a “ratification” resolution, the ERA is now enforceable. (Section 3 of the ERA specifies a two-year preparation period between ratification and activation.) Linda Coberly, the attorney who heads the legal task force of the ERA Coalition, has spoken about this litigation strategy in various webinars and interviews for many months. For example, on a May 1, 2021 virtual “ERA Summit,” Coberly said, “Those lawsuits will most certainly start to be filed in January of 2022, the two-year anniversary of Virginia’s ratification, and at that point ...courts will have to decide whether they agree with the district court in D.C. [Judge Contreras’ ruling], or whether they take some other view.”

Given the four-decade string of defeats that ERA-revival advocates have suffered in the federal courts, Coberly’s fleet of new lawsuits obviously faces strong headwinds. But part of the purpose is political theater. As Coberly put it, “One thing that litigation will explore and demonstrate is the kind of protections that the ERA will provide.” (Bloomberg Law, Dec. 28, 2021)

Meanwhile, Virginia, Nevada, and Illinois have appealed Judge Contreras’ ruling (validating the deadline and the Archivist’s refusal to certify the ERA) to the U.S. Court of Appeals for the District of Columbia, where briefs began to be filed in early January 2022, and where a three-judge panel (not yet named) will hear oral arguments sometime in the fall of 2022. A ruling by the panel is likely in early 2023, if not sooner.

It is noteworthy, however, that an increasing number of ERA advocates are openly asserting that the federal courts lack authority to resolve the legal issues surrounding ERA’s status. For example, in an opinion piece published in the *Washington Post* on November 22, 2021, David Pozen and Thomas P. Schmidt of Columbia Law School asserted, “On many matters of constitutional law, the legal community has accepted that the Supreme Court enjoys the final word. Questions about whether an amendment has become part of the Constitution are an important exception. Congress, not the courts, is the primary arbiter of an amendment’s validity.”

On January 10, 2022, Pozen joined three other law professors (Erwin Chemerinsky, Noah Feldman, and Julie C. Suk) on a friend-of-the-court brief in *Virginia v. Ferriero*, arguing that the courts should take a hands-off approach, stepping back and allowing Congress to decide if the ERA is part of the Constitution.

Longtime pro-ERA activist Kate Kelly, now counsel to Congresswoman Carolyn Maloney (who chairs the House Oversight and Reform Committee), said on Twitter on January 16, 2022: “Running tally of roles given by Article V of the U.S. Constitution to the judiciary in the amending process: 0.”

However, the ERA Coalition’s Linda Coberly told Bloomberg Law, “There is no question that the validity of the Equal Rights Amendment will ultimately be resolved by a court. That could happen soon in the



"The court's reasoning clearly affirms Congress's role as the director of the Article V amendment process."

CUNY Professor Julie Suk commenting March 6, 2021 on the ruling of U.S. District Court Judge Rudolph Contreras in *Virginia v. Ferriero*



"In addition, the effect of a ratification deadline is not the kind of question that ought to vary from political moment to political moment...Yet leaving the efficacy of ratification deadlines up to the political branches would do just that."

U.S. District Judge Rudolph Contreras (appointee of President Obama), ruling in *Virginia v. Ferriero*, March 5, 2021

D.C. Circuit, or it could happen years from now in litigation that advocates bring to enforce the provisions that advocates believe are a part of our Constitution." ("Equal Rights Amendment litigation likely to ramp up in new year," by Chris Marr; Dec. 28, 2021.)

Continuing Political Pressure on the Biden Administration to Twist Legal Standards, and/or on the Archivist of the U.S. to "Go Rogue"

ERA-advocacy groups have, with varying degrees of vehemence, engaged in repeated demands that various Executive Branch officials take actions to declare that the ERA has become part of the Constitution. Such urgings have variously directed at President Biden, Attorney General

Merrick Garland, Assistant Attorney General for the Office of Legal Counsel (OLC) Christopher Schroeder, and the Archivist of the United States, David Ferriero. The actions demanded have been the withdrawal of the January 2020 OLC opinion holding that the ERA had expired, and the publication ("certification") of the ERA as part of Constitution by the Archivist.

"These are, in effect, demands for Executive Branch officials to simply ignore judicial rulings and to act on the basis of a set of politically dictated ideological positions," said NRLC's Johnson.

On January 26, 2022, the Justice Department finally took action, but it was a far cry from the action that the ERA-revival activists had been demanding. OLC head Christopher Schroeder issued a new, three-page opinion about the ERA – but did not withdraw the January 2020 OLC opinion, which therefore continues to be the official interpretation of the governing constitutional law for the Archivist and other members of the Executive Branch.

In the new memo, Schroeder wrote that some of the issues addressed in the 2020 memo "were closer and more difficult than the opinion suggested," but he did not directly repudiate any of them. He wrote, "As a co-equal branch of government, Congress is entitled to take a different view on these complex and unsettled questions," which was no more than a truism – the Office of Legal Counsel provides legal guidance for the Executive Branch, and no one has suggested that its opinions could impede Congress from acting on a different interpretation.

Schroeder also noted that the Justice Department is currently in federal court defending the Archivist's failure to publish the ERA, and that "the federal courts may soon determine or shed light upon several unsettled matters."

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The next day, January 27, 2022, President Biden issued a statement stating, “I am calling on Congress to act immediately to pass a resolution recognizing ratification of the ERA. As the recently published Office of Legal Counsel memorandum makes clear, there is nothing standing in Congress’s way from doing so.”

“Thus, the President is urging the Senate to adopt a resolution ‘recognizing ratification of the ERA,’ even though the official position of the Justice Department, being defended in court, is that the ERA has not been ratified,” commented NRLC’s Johnson. “This appears to be an awkward attempt to appease political activists, while not displaying open contempt for the judgments and proceedings of federal courts. The President’s gesture will not affect any votes in the Senate.”

ERA-revival activists responded to Schroeder’s failure to scrap the 2020 legal opinion by ratcheting up their fire at the Archivist -- insisting that he should simply publish the ERA as part of the Constitution without regard for any other authority.

“He’s the one holding it back. It’s a technicality,” said Rep. Carolyn Maloney (D-NY) at a January 27, 2022 press conference sponsored by the ERA Coalition. “It’s ridiculous that’s he’s holding this up.” Maloney chairs the House Oversight and Reform Committee, which has statutory oversight authority over the National Archives and Records Administration, which the Archivist heads.

Congresswoman Jackie Speier (D-Calif.) agreed: “If the Archivist wants to go down in history for a good reason, he should certify it...Then it will be law.” Speier also said, “In our minds, it is law.”

Linda Coberly, head of the legal task force for the ERA Coalition, agreed that “the Archivist could go ahead and certify it today, and we need to continue the pressure to go ahead and do that.”

NRLC’s Johnson commented, “It is remarkable that sitting members of Congress, and advocate-attorneys, are urging an official of the Executive Branch to act with complete disregard for a federal district court ruling, ongoing litigation, and the official position of the Justice Department as to the governing law, for the sake of being a hero to the activists. The ERA-revival movement seems to be becoming increasingly divorced from legal reality, if such a thing were possible.”

The U.S. Senate Will Conduct a Cloture Vote on the “Deadline Removal” Measure

At some point during 2022, U.S. Senate Majority Leader Charles Schumer will attempt to take up the measure (H.J. Res. 17) that purports to retroactively remove the ratification deadline.

Only two of the 50 Republican senators are on record in support of the Senate version of the measure (S.J. Res. 1), and they are the same two who supported such measures in the previous Congress: Lisa Murkowski of Alaska, and Susan Collins of Maine. The ERA Coalition began the Congress in 2021 with a target list of about 10 other Republican senators, speaking with confidence of a “Roadmap to 60.” They planned to add co-sponsors in bipartisan pairs as new Republicans agreed to cosponsor—they called it the “Noah’s Ark” strategy. But nearly a year later (as of January 27, 2022), not a single additional Republican senator has expressed support for the “deadline removal” measure.

“The time-travel resolution will fall well short of the 60 votes that would be required for it to clear the Senate,” said NRLC’s Johnson. “Retroactive deadline nullification is a constitutional and temporal absurdity. Its advocates would require us believe that the Constitution can be amended without two-thirds of the House and Senate, and three-quarters of the states, ever agreeing on a single fixed proposition, which is clearly what Article V requires.”

Continued ERA-Related Activity in Some State Legislatures

During 2022 there will also be activity in some state legislatures pertaining to the 1972 federal ERA. Twelve states have never ratified nor claimed to have ratified the ERA. Pro-ERA legislators and groups made unsuccessful attempts to pass “ratifications” in most of these states within the past three years, including failed efforts during 2021 in Alabama, Arizona, Florida, Georgia, North Carolina, and Utah. During 2022, ERA advocates will again try to achieve “ratification” in some of the non-ratifying states, but their prospects for success seem slim.

ADDITIONAL RESOURCES

Additional historic documentation on the Equal Rights Amendment can be found at nrlc.org/federal/era.

Douglas Johnson, director of National Right to Life’s *ERA Project*, is the pro-life movement’s subject matter expert on the Equal Rights Amendment. He has been extensively involved in the legislative and legal disputes surrounding the Equal Rights Amendment since 1982, and has written widely on the subject. He can be reached through the National Right to Life Communications Department at (202) 626-8825 or via email at mediarelations@nrlc.org

@ERA_No_Shortcuts is a recommended Twitter account dedicated exclusively to tracking legal and political developments pertaining to the federal Equal Rights Amendment, from an ERA-skeptical perspective.

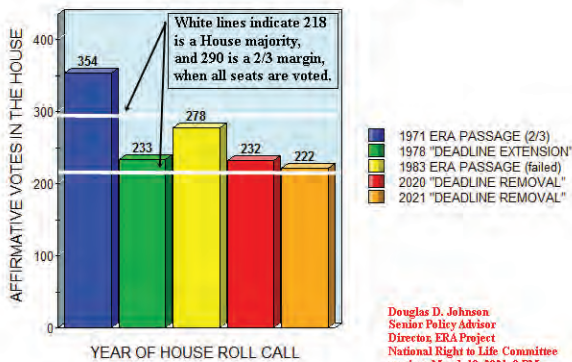
In addition, on March 19, 2021, the North Dakota legislature gave final approval to a measure (Senate Concurrent Resolution No. 4010), informally known as the “Count Us Out” resolution, stating that North Dakota’s 1975 ratification “officially lapsed” on March 22, 1979, and that North Dakota “should not be counted by Congress, the Archivist of the United States...[or] any court of law...as still having on record a live ratification” of the ERA. (This was not a “rescission,” since for those who recognize the original ratification as deadline as valid and immutable, neither true ratifications nor true rescissions are possible after March 22, 1979. Rather, a “Count Us Out” resolution merely explains or underscores the original duration of the legislative action taken decades ago.) It is possible that one or more additional ratifying states might adopt such “Count Us Out” clarifications during the coming year.

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ERA's Sinking Support in Congress: How support for the Equal Rights Amendment has plunged over a 50-year period

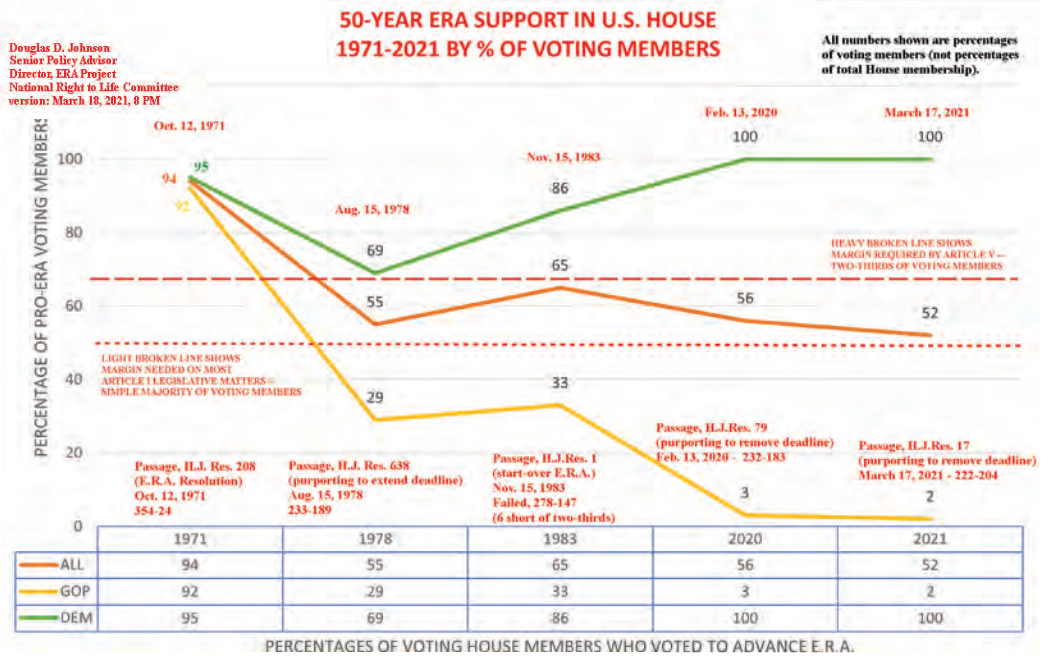
When Congress approved the Equal Rights Amendment resolution for submission to the states in 1971-1972, it did so by overwhelming margins — but that occurred only after ERA sponsors reluctantly concluded that they must accept a ratification deadline in order to overcome opposition from ERA skeptics. (“Proponents eventually relented and inserted a seven-year time limit,” noted federal Judge Rudolph Contreras in his March 2021 ruling upholding the ratification deadline.)

Affirmative Votes for ERA Measures, U.S. House, 1971-2021



Since then, the U.S. Senate has voted only once on an ERA-related matter — in 1978, when a Congress controlled by strong Democratic majorities passed, by simple majority votes (not two-thirds) a resolution that purported to extend the ERA’s ratification deadline by 39 months, to mid-1982. The only federal court ever to consider the matter ruled that this was unconstitutional, but the issue was never definitively resolved because no additional states ratified during the pseudo-extension period.

However, over a 50-year period, the U.S. House of Representatives has voted five times on ERA and directly related measures: The original ERA resolution in 1971; the “deadline extension” in 1978; a start-over ERA in 1983 (defeated on the House floor); and measures purporting to retroactively “remove” the ratification deadline in 2000 and 2001.



Analysis of these roll calls shows a precipitous drop in overall support for the ERA in the House, from 94% of voting members in 1971 to only 52% in 2021. Support among Republican House members has fallen from 92% in 1971 to 2% in 2021. The single biggest factor (although not the only factor) in this erosion in Republican support has been recognition that the 1972 ERA language would lend itself to use as a powerful pro-abortion legal weapon — an intended effect belatedly acknowledged and indeed proclaimed by pro-ERA activists.

THE BASICS

A compilation of recent and noteworthy information on the abortion issue.

Diary of an Unborn Baby



Day 1 Fertilization: all human chromosomes are present, and a unique life begins.

Day 6 The embryo begins implanting in the uterus.

Day 22 The heart begins to beat with the child's own blood, often with a different blood type than the mother's.

Week 5 Eyes, legs, and hands begin to develop.

Week 6 Brain waves are detectable¹. The mouth and lips are present, and fingers are forming².



Week 7 Eyelids and toes form. The baby now has a distinct nose and is kicking and swimming³.

Week 8 Every organ is in place⁴; bones⁵, fingerprints² begin to form.



Weeks 9 & 10 Teeth begin to form, fingernails develop⁵; baby can turn head⁵ and frown².

Week 11 Baby can grasp object placed in hand³.

Week 17 Baby can have dream (REM) sleep⁷.

Unless otherwise noted, information on fetal development taken from Keith L. Moore and T.V.N. Persaud, The Developing Human, 5th ed. (Philadelphia: W.B. Saunders Co., 1993). 1. O'Rahilly & Müller, The Embryonic Human Brain, 2nd Ed., 1999. 2. Flanagan, The First Nine Months, 1965. 3. Valman & Pearson, BMJ, 1/26/80. 4. Nilsson, A Child is Born, 1990. 5. Rugh & Shettles, From Conception to Birth, 1971. 6. P.E. Rockwell, Markle v. Abele, U.S. Supreme Court, 1971. 7. AMA News, 2/1/83. Full citations available upon request.

MORE THAN NUMBERS

There have been nearly **63 million abortions** in the U.S. since 1973.

There were over **860,000 abortions** in 2019. That is over **2,400 abortions per day, 123 per hour, 1 every 34 seconds.**

Of all pregnancies that resulted in either live birth or abortion in 2019, **19.5% resulted in abortion.**

The War On The Unborn

✚ = 1 Million Lives

Abortions in the U.S. Since 1973:



American Casualties from every war since 1775:



FEDERAL POLICY AND ABORTION: A SYNOPSIS



Overview

In the United States, the basic legal framework governing the legality of abortion and the legal status of unborn human beings has been “federalized” primarily by decisions of the United States Supreme Court, rather than by acts of Congress.

Certainly, in the four and a half decades since the U.S. Supreme Court handed down *Roe v. Wade* and *Doe v. Bolton* in 1973, there have been many proposals in Congress to overtly challenge or overturn the *Roe* doctrine by statute or constitutional amendment, or conversely, to ratify and reinforce the *Roe* doctrine by federal statute, but neither approach has ever been enacted into law.

However, that does not mean that the Congress has not played an important role in shaping abortion-related public policies. Certainly, Congress has enacted laws that have impacted the number of abortions performed. For example, the Hyde Amendment, limiting abortion funding in Medicaid and certain other programs, is estimated to have saved on the order of two million lives. Conversely, certain provisions of Obamacare have resulted in wider reliance on abortion as a method of birth control, at least in some states.

Additionally, the U.S. Senate has played and will continue to play a pivotal if indirect role in determining abortion policy, through confirmation of or rejection of nominees to the U.S. Supreme Court and the circuit courts of appeals.

Forty-nine years after *Roe v. Wade*, it does not violate any federal law to kill an unborn human being by abortion, with the consent of the mother, in any state, at any moment prior to live birth. However, the use of one specific method of abortion, partial-birth abortion, has been banned nationwide under a federal law, the Partial-Birth Abortion Ban Act (18 U.S.C. §1531), that was enacted in 2003 and upheld by the U.S. Supreme Court in 2007. Partial-birth abortion, which is explicitly defined in the law, was a method used in the fifth month and later (i.e., both before and after “viability”), in which the baby was partly delivered alive before the skull was breached and the brain destroyed. Abortion performed with consent of the mother by any other method, up to the moment of birth, does not violate any federal law.

Under the Born-Alive Infants Protection Act (PL 107-207), enacted in 2002, humans who are born alive, whether before or after “viability,” are recognized as full legal persons for all federal law purposes. This law says that “with respect to a member of the species homo sapiens,” the term born alive “means the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.” Much stronger federal protection would be provided by the Born-Alive Abortion Survivors Protection Act.

On February 25, 2020, fifty- six (56) senators voted to take up the Born-Alive Abortion Survivors Protection Act but 60 votes were required, so the bill did not advance.

On April 14, 2021, a discharge petition was filed for H.R. 619, the Born-Alive Abortion Survivors Protection Act. It currently has 213 signatures, and is currently short of the required 217. This legislation would enact an explicit requirement that a baby born alive during an abortion must be afforded “the same degree” of care that would apply “to any other child born alive at the same gestational age,” including transportation to a hospital, and applies the existing penalties of 18 U.S.C. § 1111 (the federal murder statute) to anyone who performs “an overt act that kills [such] a child born alive.”

Humans carried in the womb “at any stage of development” who are injured or killed during the commission of certain violent federal crimes are fully recognized as human victims under the Unborn Victims of Violence Act (PL 108-212), enacted in 2004. For example, under certain circumstances, conviction of killing an unborn child during commission of a federal crime can subject the perpetrator to a mandatory life sentence for murder. (The majority of states have enacted similar laws, usually referred to as “fetal homicide” laws. See: www.nrlc.org/federal/unbornvictims/statehomicidelaws092302. Federal and state courts have consistently ruled that such laws in no way conflict with the doctrine of *Roe v. Wade*. See: www.nrlc.org/federal/unbornvictims/statechallenges.)

Pro-abortion advocacy groups have periodically campaigned for enactment of federal “abortion rights” statutes (e.g., the “Women’s Health Protection Act,” formerly the “Freedom of Choice Act”), and have extracted endorsements of such measures from three presidents (Clinton, Obama, and Biden). The 117th Congress became the first to pass this measure (roll call no. 295) in the House of Representatives by a vote of 218-211, but the legislation has not yet been considered in the Senate.

A number of federal laws generally prohibit federal subsidies for abortion in various specific programs, the best known of these being the Hyde Amendment, which governs funds that flow through the annual federal health and human services appropriations bill. A fuller explanation of the Hyde Amendment can be found starting on page 15. However, as discussed below, the Obamacare health law enacted in 2010 contains provisions that sharply depart from the Hyde Amendment principles, primarily by authorizing federal subsidies for the purchase of private health plans that cover abortion on demand.

Various federal laws seek to prevent discrimination against health care providers who do not wish to participate in providing abortions (often called “conscience protection” laws), and enforcement of these laws has varied with different administrations.

FEDERAL POLICY AND ABORTION

Judicial Federalization of Abortion Policy

Until the 1960s, unborn children were protected from abortion by laws enacted by legislatures in every state. Between 1967 and 1973, some states weakened those protections, beginning with Colorado in 1967. During that era, the modern pro-life movement formed to defend state pro-life laws, and the pro-life side had turned the tide in many states when the U.S. Supreme Court in effect “federalized” abortion policy in its January 1973 rulings in *Roe v. Wade* and *Doe v. Bolton*. Those rulings effectively prohibited states from placing any value at all on the lives of unborn children, in the abortion context, until the point that a baby could survive independently of the mother (“viability”). Moreover, these original rulings even effectively negated state authority to protect unborn children after “viability.” As *Los Angeles Times* Supreme Court reporter David Savage wrote in a 2005 retrospective on the case:

But the most important sentence appears not in the Texas case of *Roe vs. Wade*, but in the Georgia case of *Doe vs. Bolton*, decided the same day. In deciding whether an abortion [after “viability”] is necessary, Blackmun wrote, doctors may consider “all factors – physical, emotional, psychological, familial and the woman’s age – relevant to the well-being of the patient.” It soon became clear that if a patient’s “emotional well-being” was reason enough to justify an abortion, then any abortion could be justified.

(See “*Roe* Ruling More Than Its Author Intended,” *Los Angeles Times*, Sept. 14, 2005, www.nrlc.org/communications/resources/savagelatimes091405)

In a detailed series on late abortions published in 1996, *Washington Post* medical writer David Brown reached a similar conclusion:

Contrary to a widely held public impression, third-trimester abortion is not outlawed in the United States . . . Because of this definition [the “all factors” definition from *Doe v. Bolton*, quoted by Savage above], life-threatening conditions need not exist in order for a woman to get a third-trimester abortion.” (“Viability and the Law,” *Washington Post*, Sept. 17, 1996.)

For many years after *Roe* and *Doe* were handed down, a majority of Supreme Court justices enforced this doctrine aggressively, striking down even attempts by some states to discourage abortions after “viability.” Eventually the Court stepped back somewhat from this approach, tolerating some types of state regulations on abortion, while continuing to deny legislative bodies the right to place “undue burdens” on abortion prior to “viability.”

In *Gonzales v. Carhart* (2007), a five-justice majority upheld the federal Partial-Birth Abortion Ban Act, which placed a prohibition on use of a specific abortion method either before or after “viability.”

In its 2016 ruling in *Whole Women’s Health v. Hellerstedt*, the Court declared unconstitutional Texas laws requiring abortion clinics to meet surgical-center standards, and requiring abortionists to have admitting privileges at a hospital within 30 miles. The majority ruled that these requirements constituted an “undue burden” on access to pre-viability abortions and appeared to risk ruling out even minor, previously valid infringements on access to abortion. However, in its 2020 *June Medical Services v. Russo* ruling that struck a pro-life Louisiana law, the court nonetheless seemingly restored the precedent from the 1992 case, *Planned Parenthood of Southeastern Pennsylvania v. Casey*.

All eyes are on the U.S. Supreme Court as a decision in *Dobbs v. Jackson Women’s Health Organization* is expected later this year. The *Dobbs* case concerns Mississippi’s “Gestational Age Act” which bans abortions after 15-weeks gestation. The Court’s decision late this year will address the question of whether a state has a compelling interest in protecting the right to life prior to viability. The key question seems to be how far the Court is willing to go, either a decision that just rejects the viability line, permitting states to argue that prohibitions on abortion prior to viability are justified by sufficiently compelling state interests or if they will issue a broader decision which explicitly either totally or partially overrules *Roe* and/or *Casey*.

Congressional Action on Federal Subsidies for Abortion

As early as 1970, Congress added language to legislation authorizing a major federal “family planning” program, Title X of the Public Health Service Act, providing that none of the funds would be used “in programs where abortion is a method of family planning.” In 1973, Congress amended the Foreign Assistance Act to prohibit the use of U.S. foreign aid funds for abortion.

However, after *Roe v. Wade* was handed down in 1973, various federal health programs, including Medicaid, simply started paying for elective abortions. Congress never affirmatively voted to require or authorize funding for abortions under any of the programs, but administrators and courts interpreted general language authorizing or requiring payments for medical services as including abortion. By 1976, the federal Medicaid program alone was paying for about 300,000 abortions a year, and the number was escalating rapidly. Congress responded by attaching a “limitation amendment” to the annual appropriations bill for health and human services—the Hyde Amendment—prohibiting federal reimbursement for abortion, except to save the mother’s life. In a 1980 ruling (*Harris v. McRae*), the U.S. Supreme Court ruled, 5-4, that the Hyde Amendment did not contradict *Roe v. Wade*. The Court said:

By subsidizing the medical expenses of indigent women who carry their pregnancies to term while not subsidizing the comparable expenses of women who undergo abortions (except those whose lives are threatened), Congress has established incentives that make childbirth a more attractive alternative than abortion for persons eligible for Medicaid. These incentives bear a direct relationship to the legitimate congressional interest in protecting potential life. Nor is it irrational that Congress has authorized federal reimbursement for medically necessary services generally, but not for certain medically necessary abortions. Abortion is inherently different from other medical procedures, because no other procedure involves the purposeful termination of a potential life.

In later years, as Medicaid moved more into a managed-care model, the Hyde Amendment was expanded to explicitly prohibit any federal Medicaid funds from paying for any part of a health plan that covered abortions (with narrow exceptions). Thus, the Hyde Amendment has long prohibited not only direct federal funding of abortion procedures, but also federal funding of plans that include abortion coverage—a point often misrepresented by Obama Administration officials during the 2009-2010 debate over the Obamacare legislation, and often missed or distorted by journalistic “factcheckers.” The Hyde Amendment reads in pertinent part:

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None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for health benefits coverage that includes coverage of abortion. . . . The term ‘health benefits coverage’ means the package of services covered by a managed care provider or organization pursuant to a contract or other arrangement.

Following the Supreme Court decision upholding the Hyde Amendment, Congress enacted a number of similar laws to prohibit abortion coverage in other major federally subsidized health insurance plans, including those covering members of the military and their dependents, federal employees, and certain children of parents with limited incomes (S-CHIP). By the time Barack Obama was elected president in 2008, this array of laws had produced a nearly uniform policy that federal programs did not pay for abortion or subsidize health plans that included coverage of abortion, except when necessary to save the life of the mother, or in cases of rape or incest.

Provisions of the Obamacare health law sharply deviated from this longstanding policy. While the President repeatedly claimed that his legislation would not allow “federal funds” to pay for abortions, a claim reiterated in a hollow executive order, the law itself explicitly authorized massive federal subsidies to assist many millions of Americans to purchase private health plans that will cover abortion on demand in states that fail to pass laws to limit abortion coverage.

Some defenders of the Obamacare law originally insisted that this would not really constitute “federal funding” of abortion because a “separate payment” would be required to cover the costs of the abortion coverage. National Right to Life and other pro-life groups dismissed this requirement as nothing more than an exercise in deceptive re-labeling, and as a “bookkeeping gimmick” that sharply departed from the principles of the Hyde Amendment. In the 26 states (plus D.C.) that did not have laws in effect that restrict abortion coverage, over one thousand exchange plans covered abortion, the report found. (See “GAO report confirms elective abortion coverage widespread in Obamacare exchange plans,” www.nrlc.org/communications/releases/2014/release091614)

Further, in 2021, there were an estimated total of 1,296 available plans in those 26 jurisdictions with no restriction on abortion coverage. Of those plans, an estimated 69% (892 plans) cover elective abortion. In 2020 alone, it is estimated that \$13 billion dollars flowed to plans that cover abortion on demand. See here for more information: www.obamacareabortion.com/resources

The No Taxpayer Funding for Abortion Act would apply the full Hyde Amendment principles in a permanent, uniform fashion to federal health programs, including those created by the Obamacare law. With respect to Obamacare, this would mean that private insurance plans that pay for elective abortions would not qualify for federal subsidies, although such plans could still be sold through Obamacare exchanges, in states that allow it, to customers who do not receive federal subsidies. The U.S. House of Representatives passed this legislation in 2011, 2014, 2015, and 2017. In the 117th Congress, a procedural vote that would have brought the measure for consideration (roll call no. 175) failed the Democrat-controlled chamber by a vote of 218-209.

Federal Subsidies for Abortion Providers

Despite the laws already described that are intended to prevent federal funding of elective abortion, many organizations that provide and actively promote abortion receive large amounts of federal funding from various health programs. For example, the Planned Parenthood Federation of America (PPFA), which provides more than one-third of all abortions within the United States, also receives approximately \$450 million a year in federal funding from various programs, of which Medicaid is the largest. Pro-life forces in Congress have made repeated attempts to enact a new law to deny PPFA eligibility for federal funds. In December, 2015, the Senate for the first time passed legislation (H.R. 3762) that would disqualify PPFA from receiving funds under Medicaid and certain other federal programs, and the House gave final approval to this legislation on January 6, 2016. However, President Obama vetoed this bill on January 8, 2016, and the veto was sustained. The U.S. House has since voted numerous times to defund Planned Parenthood, but none of these measures have passed the U.S. Senate.

PPFA's status as a major recipient of federal funds drew increased public attention beginning in mid-2015, with the release of a series of undercover videos showing various PPFA-affiliated doctors and executives apparently discussing the harvesting of baby body parts for sale to researchers. After initial probes by several House committees and by the Senate Judiciary Committee, the House Republican leadership created the Special Investigative Panel on Infant Lives, a 14-member committee that probed various aspects of the abortion industry, including trafficking in body parts, and released a report on December 30, 2016.

International Abortion Funding

There are also numerous policy issues related to foreign aid and abortion. One policy at issue was originally announced by the Reagan Administration in 1984 at an international population conference in Mexico City, and therefore, until now, it has been officially known as the Mexico City Policy. That policy required that, in order to be eligible for certain types of foreign aid, a private organization must sign a contract promising not to perform abortions (except to save the mother's life or in cases of rape or incest), not to lobby to change the abortion laws of host countries, and not to otherwise "actively promote abortion as a method of family planning." The Mexico City Policy has been adopted by each Republican president since, and rescinded by each Democrat president.

Under previous Republican presidents, the policy applied to family planning programs administered by the U.S. Agency for International Development (USAID) and the State Department. However, in the decades since 1984, a number of new health-related foreign assistance programs have been created, under which the U.S. provides support to private organizations that interact with many women of childbearing age in foreign nations. All too many of these organizations have incorporated promotion of abortion into their programs—even in nations which have laws that provide legal protection to unborn children.

When President Trump reinstated the Mexico City Policy, now called the Protecting Life in Global Health Program, he also widened its reach. The expanded policy reached a substantially expanded array of overseas health programs, including those dealing with HIV/AIDS, maternal and child health, and malaria, and including some programs operated by the Defense Department. In one of their first actions upon taking office, the Biden Administration, on January 28, 2021, reversed this policy.

Congressional Action on Direct Protection for Unborn Children

During the Reagan Administration there were attempts to move legislation to directly challenge *Roe v. Wade*, but no such measure cleared either house of Congress.

After the Republicans took control of Congress in the 1994 election, Congress for the first time approved a direct federal ban on a method of abortion — the Partial-Birth Abortion Ban Act. President Clinton twice vetoed this legislation. The House overrode the vetoes, but the vetoes were sustained in the Senate.

After the election of President George W. Bush, the Partial-Birth Abortion Ban Act was enacted into law in 2003. This law was upheld 5-4 by the U.S. Supreme Court in the 2007 ruling of *Gonzales v. Carhart*, and is in effect today. The law makes it a federal criminal offense to perform an abortion in which the living baby is partly delivered before being killed, unless this was necessary to save the mother's life. The law applies equally both before and after "viability" (and most partial-birth abortions were performed before "viability"), and it does not contain a broad "health" exception such as the Court had required in earlier decisions.

Study of the Court's reasoning in *Gonzales* led many legal analysts, on both sides of the abortion issue, to conclude that the Court majority had opened the door for legislative bodies to enact broader protections for unborn children. In response to the *Gonzales* ruling, National Right to Life developed the model Pain-Capable Unborn Child Protection Act, which declares that the capacity to experience pain exists at least by 20 weeks fetal age, and generally prohibits abortion after that point. As described in the State Legislation section of this report, the National Right to Life model legislation has now been enacted, with slight variations, in 18 states.

A federal version of the legislation has been passed numerous times by the House of Representatives and garnered a majority of votes in the Senate (while short of the 60 needed to advance). The Pain-Capable Unborn Child Protection Act has been among the right-to-life movement's top congressional priorities for several Congresses. National Right to Life has estimated that there are at least 275 abortion providers performing abortions past the fetal-age point that the federal legislation would allow.

During the 117th Congress, the Dismemberment Abortion Ban Act was introduced in Congress by Congresswoman Debbie Lesko (R-Ariz.) in the House. The legislation is based on a model state-level bill developed by National Right to Life, which has been enacted in 13 states). The federal bill would prohibit nationally the performance of "dismemberment abortion," defined as "with the purpose of causing the death of an unborn child, knowingly dismembering a living unborn child and extracting such unborn child one piece at a time or intact but crushed from the uterus through the use of clamps,

grasping forceps, tongs, scissors or similar instruments that, through the convergence of two rigid levers, slice, crush or grasp a portion of the unborn child's body in order to cut or rip it off or crush it." This prohibition would apply to many applications of the method referred to by abortionists as "dilation and evacuation" (D&E), which currently is the most common second-trimester abortion method, employed starting at about 14 weeks of pregnancy; the method is depicted in a medical illustration here: www.nrlc.org/abortion/pba/deabortiongraphic.

In addition, there has been a state effort to protect unborn children once a heartbeat has been detected (typically around 6 weeks). While various states have passed some version of this legislation, only one in Texas (S.B. 8) remains currently in effect as it is challenged in court. A federal version has been introduced in the House by Rep. Mike Kelly (R-Pa.) and is supported by National Right to Life.

Federal Conscience Protection Laws

Congress has repeatedly enacted federal laws to protect the rights of health care providers who do not wish to participate in providing abortions, including the Church Amendment of 1973 and the Coats-Snowe Amendment of 1996. One of the most sweeping such protections, the Hyde-Weldon Amendment, has been part of the annual health and human services appropriations bill since 2004. This law prohibits any federal, state, or local government entity that receives any federal HHS funds from engaging in "discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions." The law defines "health care entity" as including "an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan."

However, the Biden Administration has continued the policy of the Obama era, which undercut enforcement of the federal conscience laws in various ways, and indeed orchestrated attacks on conscience rights in a sweeping and aggressive fashion. Various pieces of remedial legislation are expected during the 117th Congress, including the Conscience Protection Act.

Attempts in Congress to Protect "Abortion Rights" in Federal Law

During the administration of President George H. W. Bush (1989-93), the Democrat-controlled Congress made repeated attempts to weaken or repeal existing laws restricting inclusion of abortion in various federal programs. During his term in office, President Bush vetoed ten measures to protect existing pro-life policies, and he prevailed on every such issue.

The so-called "Women's Health Protection Act", formerly the "Freedom of Choice Act"

Beginning about 1989, pro-abortion advocacy groups declared as a major priority enactment of a federal statute, styled the "Freedom of Choice Act" (FOCA), a bill to override virtually all state laws that limited access to abortion, both before and after "viability." Bill Clinton endorsed the FOCA while running for president in 1992. As Clinton was sworn into office in January 1993, leading pro-abortion advocates predicted Congress, with lopsided Democrat majorities in both houses, would send Clinton the FOCA within six months.

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The FOCA did win approval from committees in both the Senate and House of Representatives in early 1993, but it died without floor votes in either house when the pro-abortion lobby found, much to its surprise, that it could not muster the votes to pass the measure after National Right to Life engaged in a concerted campaign to educate members of Congress regarding its extreme effects.

The original drive for enactment of FOCA ended when Republicans gained majority control of Congress in the 1994 elections. The only affirmatively pro-abortion statute enacted during the Clinton years was the “Freedom of Access to Clinic Entrances” statute (18 U.S.C. §248), enacted in 1994, which applies federal criminal and civil penalties to those who interfere with access to abortion clinics in certain ways. However, starting in 2004, pro-abortion advocacy groups renewed their agitation for FOCA. (See www.nrlc.org/federal/foca/article020404foca)

In 2013, alarmed by the enactment of pro-life legislation in numerous states, leading pro-abortion advocacy groups again unveiled a proposed federal statute that would invalidate virtually all federal and state limitations on abortion, including various types of laws that have been explicitly upheld as constitutionally permissible by the U.S. Supreme Court. This updated FOCA is formally styled the “Women’s Health Protection Act,” although National Right to Life noted that it would accurately be labeled the “Abortion Without Limits Until Birth Act.” On July 15, 2014, the U.S. Senate Judiciary Committee (then controlled by Democrats) conducted a hearing on the bill, at which National Right to Life President Carol Tobias presented testimony explaining the radical sweep of the legislation. Following the hearing, the Judiciary Committee took no further action on the bill during the 113th Congress.

A renewed effort is underway in the 117th Congress, again controlled by Democrats, due to the pending Supreme Court *Dobbs* case. For the first time, the sweeping legislation (H.R. 3755) received a vote in the House and passed 218-211 (roll call no. 295). The Senate has not yet voted on this legislation. Not only would H.R. 3755 overturn existing pro-life laws, it would prevent new protective laws from being enacted at the state and federal levels. This bill seeks to strip away from elected lawmakers the ability to provide even the most minimal protections for unborn children, at any stage of their pre-natal development. H.R. 3755 would invalidate most previously enacted federal limits on abortion, including federal conscience protection laws and most, if not all, limits on government funding of abortion.

The “Equality Act”

On February 25, 2021, the so-called “Equality Act” (H.R. 5), one of the more pro-abortion pieces of legislation in the House of Representatives, was voted on. The legislation was supported by 215 Democrats and 3 Republicans. It was opposed by 209 Republicans.

Despite being billed as legislation dealing with sexual orientation and gender discrimination, H.R. 5 contains language that could be construed to create a right to demand abortion from health care providers, and likely would place at risk the authority of state and federal government to prohibit taxpayer-funded abortions. If enacted, this legislation could be used as a powerful tool to challenge any and all state abortion restrictions.

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The Equality Act amends the Civil Rights Act of 1964 by defining “sex” to include “pregnancy, childbirth, or a related medical condition.” It is well established that abortion will be regarded as a “related medical condition.” H.R. 5 goes on to expand this anti-discrimination provision by stating that “pregnancy, childbirth, or a related medical condition shall not receive less favorable treatment than other physical conditions,” and would add “establishments that provide health care” to the list of covered “public accommodations.”

What these provisions will mean, taken together, is that health care establishments and individuals providing healthcare will be required to provide abortion as a “treatment” for pregnancy. H.R. 5’s new definition of “public accommodations” includes any “establishment that provides health care.” The bill has an additional rule of construction that the term “establishment...shall not be construed to be limited to a physical facility or place.”

National Right to Life Committee strongly opposed passage of H.R. 5. Action may occur in the Senate.

STATE LAWS & ABORTION



“We are the heirs of the activists who came before us. We’ve made great strides toward our goal in recent years, despite the furious and feverish opposition of the abortion lobby. We’ve passed many pro-life laws in the states, as a shield for the unborn and to curb the worst abuses of the abortion industry.”

-Arkansas Senator Tom Cotton,
speaking at the NRLC 2021 Convention

Synopsis of State Laws

The following pages provide a summary of state laws which highlight several types of key legislation enacted by National Right to Life’s network of state affiliates over the past 25 years. These state laws have certainly had an impact on the abortion numbers, as discussed earlier in this report. 2021 was a particularly strong year for the pro-life movement at the state level, a year that also saw two life-saving state laws reviewed by the nation’s highest court. The number of pro-life bills introduced was in the hundreds; several dozen bills that protect mothers and children were enacted in over a dozen states. The aggressive legislative outreach on the part of National Right to Life and its network of state affiliates has contributed to the introduction and passage of successful pro-life legislation across the country.

Although two major Supreme Court cases captured national headlines, there were also other very important and positive pro-life trends in the state legislatures in 2021. Legislative trends included bills regarding abortion pill reversal, regulating chemical abortions, the Born-Alive Infant Protection Act, bills against dismemberment abortion, the Pain-Capable Unborn Child Protection Act, and pro-life constitutional amendments. Abortions bans, such as those prohibiting abortions on babies with fetal anomalies, genetic disorders, and on the basis of sex (anti-discrimination abortions), and prohibiting abortions when a fetal heartbeat is detected, were introduced, and some enacted. Informed consent laws, including the “Every Mother Matters Act” and ultrasound viewing requirements, were enacted. Other life-affirming laws passed included requirements to humanely dispose of fetal remains, prohibiting abortion funding for state institutions, protecting minors from abortion, and safe haven (“baby box”) laws.

Texas, Mississippi, and the U.S. Supreme Court

Two noteworthy state laws have mother and child front and center in the national spotlight this year. The U.S. Supreme Court granted review in *Dobbs v. Jackson Women’s Health Organization*, concerning Mississippi’s Gestational Age Act. The case was heard on December

1, 2021. The Court also granted review in *United States v. Texas* and *Whole Women's Health v. Jackson*, both regarding the Texas Heartbeat Act; these cases were heard on November 1, 2021.

Mississippi's 2018 "Gestational Age Act" at issue in the case *Dobbs v. Jackson Women's Health Organization* would protect unborn children from abortions after 15-weeks' gestation. Mississippi's law seeks to protect a child at a time when all organ systems are formed and functioning, and the child is simply growing.

The Court's decision, expected early in the summer of 2022, will address the question of whether a state has a compelling interest in protecting the right to life prior to viability. This law and case highlight the fact that, noted by NRLC President Carol Tobias, "viability is an ever-changing standard and, therefore, is unworkable as the timeline or framework for abortion. For many years, babies were thought to be viable at 28 weeks. Now, babies are generally considered to be viable at 24 weeks, but babies have survived at 21 weeks. Viability is not a characteristic of the baby but of how advanced our technology has become." Viability as a legal standard is unworkable. In 1973, when *Roe v. Wade* was decided, 24-26 weeks gestation was considered "viability." Today, viability is seen as occurring between 21-22 weeks gestation. As medical technology advances, viability is a recognition of the current status of our medical technology and not of the development of the child herself.

The "Texas Heartbeat Act" protects unborn children whose hearts have begun to beat, usually at about 6 weeks of pregnancy. The Texas law is unique in that enforcement of the law is largely left to private citizens to sue abortion clinics and doctors to prevent them from violating the state law, and not by state officials through criminal penalties.

The law was allowed to stay in effect during court proceedings, and the High Court allowed it to stay in effect indefinitely, even though the limited state enforcement of the law through professional licensing boards will be subject to challenge in federal court. The Court also refused to permit federal courts to just "enjoin the law," which the abortion clinics wanted. The Court also summarily dismissed the Biden Administration's appeal of the lower court's refusal to enjoin the Texas law, in a suit brought by the Justice Department against the State of Texas. The Court thereby signaled that the Biden Administration's suit had so little merit that the Court need not consider their appeal. Court proceedings continue at this time. As of this writing, the law is still in effect, and it is estimated to have saved approximately 100 babies per day since it went into effect on September 1, 2021.

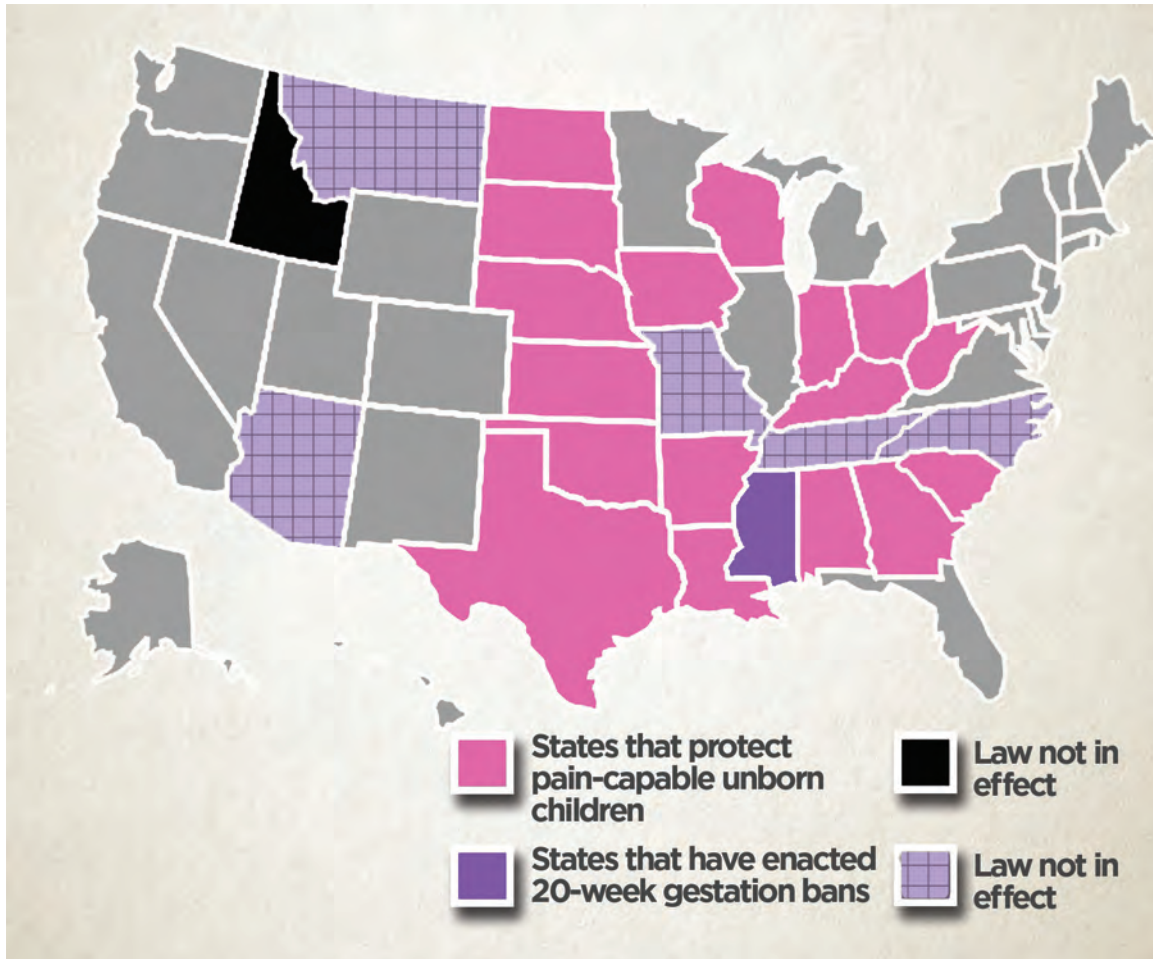
"Extreme" Abortion Laws? "Extremely" Successful in Protecting Life

Pro-abortionists believe laws that affirm the life of an unborn child, provide factual medical and scientific information, and whole care for a mother, are "extreme."

Protecting babies that have a heartbeat, formed fingers and toes, functioning organs, all of which are seen with eyes on an ultrasound screen and heard with ears on a doctor's stethoscope, is extreme? Providing information and help to a woman to possibly stop the process of a medication abortion is extreme? Providing life-affirming alternatives to a woman seeking an abortion, and having "safe haven" laws that provide safe, warm locations for a mother to safely surrender her baby are extreme?

As pro-lifers we are "extremely" proud about our successes in passing such laws in states across our nation, and we will continue to do this for those who need us most: vulnerable mothers and babies.

Pain-Capable Unborn Child Protection Act



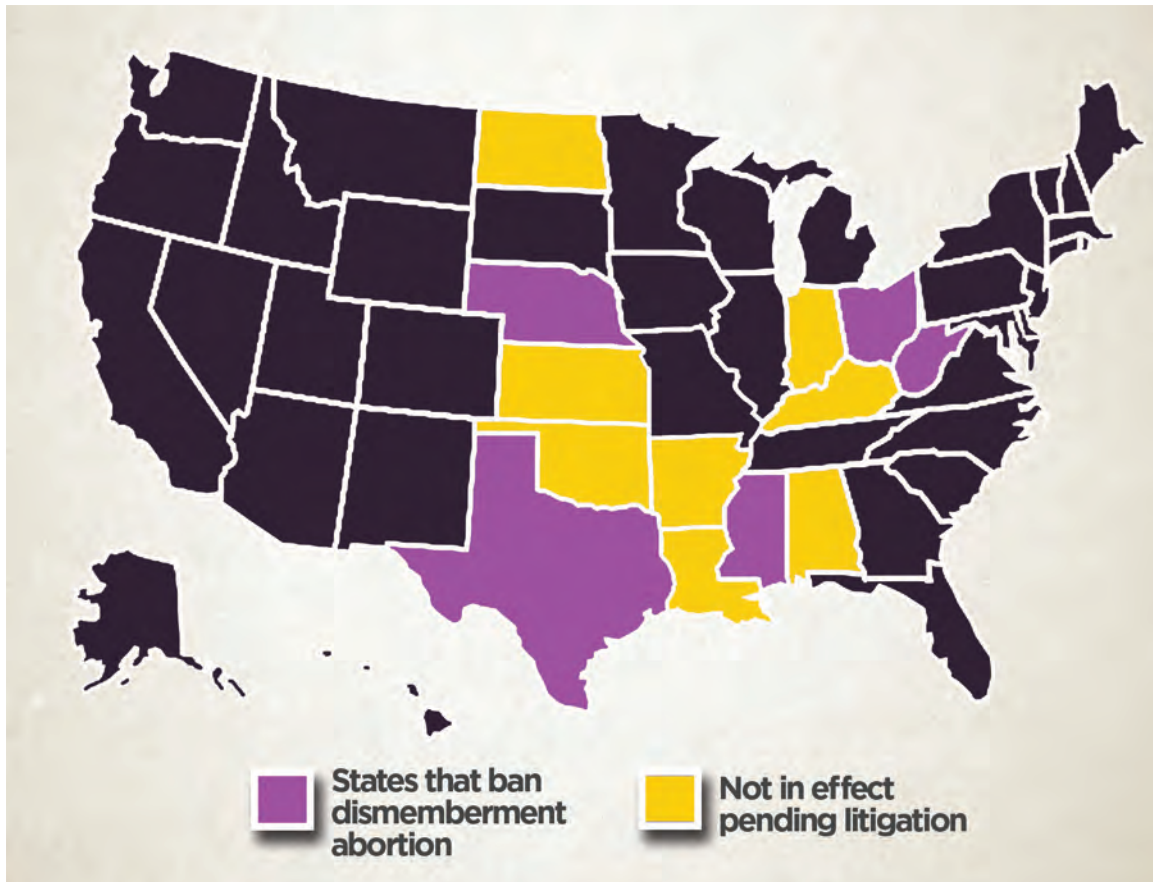
First enacted by the state of Nebraska in 2010, the model Pain-Capable Unborn Child Protection Act, drafted by National Right to Life's Department of State Legislation, is legislation which protects from abortion unborn children who are capable of feeling pain. There has been an explosion in scientific knowledge concerning the unborn child since 1973, when *Roe v. Wade* was decided. Now, for example, there is substantial medical evidence that an unborn child is capable of experiencing pain by at least 20 weeks after fertilization. These laws protect the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain.

18 states have passed pain-capable laws protecting babies at 20 weeks post-fertilization age; 1 law is not in effect (Idaho). States that protect pain-capable unborn children at 20 weeks post-fertilization age (22 weeks gestation): Alabama, Arkansas, Georgia,* Idaho,* Indiana, Iowa, Kansas, Kentucky, Louisiana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, West Virginia, and Wisconsin.

6 states have enacted a 20 week gestation pain-capable law; 5 are not in effect; 1 is in effect (Mississippi). These laws protect unborn children at 20 weeks gestational age (18 weeks post-fertilization age) and some have limited pain findings. Some findings are based on a legal theory that abortions later in pregnancy are a health risk for women. Most of these laws are enjoined except for Mississippi. States that have passed these laws: Arizona, Mississippi, Missouri, Montana, North Carolina, and Tennessee.

*These laws were challenged in court. Idaho is enjoined and Georgia was previously challenged and partially enjoined. The case was later dismissed on the grounds of sovereign immunity. The law is now in effect.

Protecting Unborn Children from Dismemberment Abortion



During the 2015 state legislative session, Kansas* and Oklahoma* became the first two states to enact the Unborn Child Protection from Dismemberment Abortion Act. D&E dismemberment abortions of living unborn babies are as brutal as the partial-birth abortion method, which is now illegal in the United States. Twelve more states (Alabama*, Arkansas*, Indiana*, Kansas*, Kentucky*, Louisiana*, Mississippi, Nebraska, North Dakota*, Ohio, Texas, and West Virginia) have enacted laws to protect unborn children from this brutal abortion procedure.

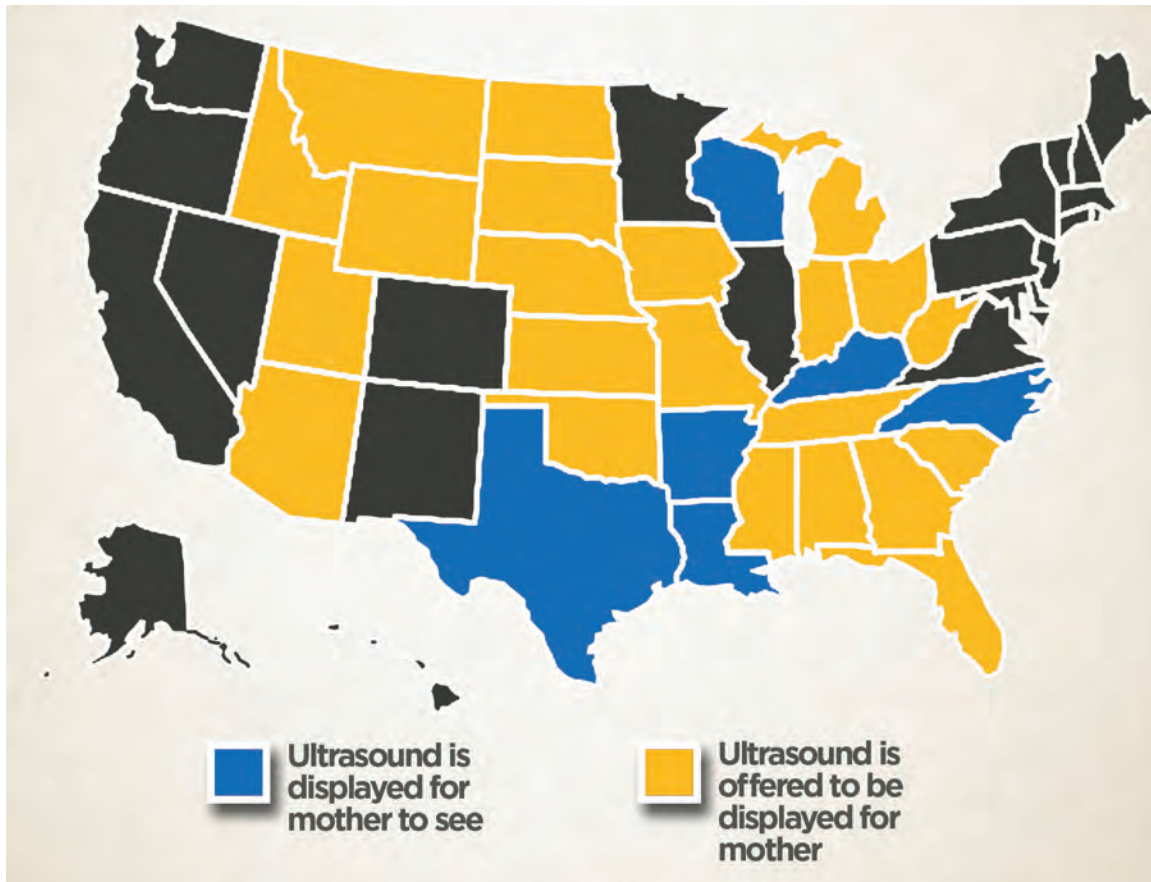
In his dissent to the U.S. Supreme Court's 2000 *Stenberg v. Carhart* decision, Justice Kennedy observed that in D&E dismemberment abortions, "The fetus, in many cases, dies just as a human adult or child would: It bleeds to death as it is torn limb from limb. The fetus can be alive at the beginning of the dismemberment process and can survive for a time while its limbs are being torn off." Justice Kennedy added in the Court's 2007 opinion, *Gonzales v. Carhart*, which upheld the ban on partial-birth abortion, that D&E abortions are "laden with the power to devalue human life..."

The states enacting the Unborn Child Protection from Dismemberment Abortion Act are not asking the Supreme Court to overturn or replace the 1973 *Roe v. Wade* holding that the state's interest in unborn human life becomes "compelling" at viability. Rather, they are asking the Court to apply, as it did in the 2007 *Gonzales* decision, the compelling interest a state has in protecting the integrity of the medical profession and also to recognize the additional separate and independent compelling interest the state has in fostering respect for life by protecting the unborn child from death by dismemberment abortion.

For more detailed information visit: www.nrlc.org/uploads/stateleg/StateLawsDismembermentAbortionBans.pdf

*not in effect pending litigation

A Woman's Right to Know: Ultrasound Laws

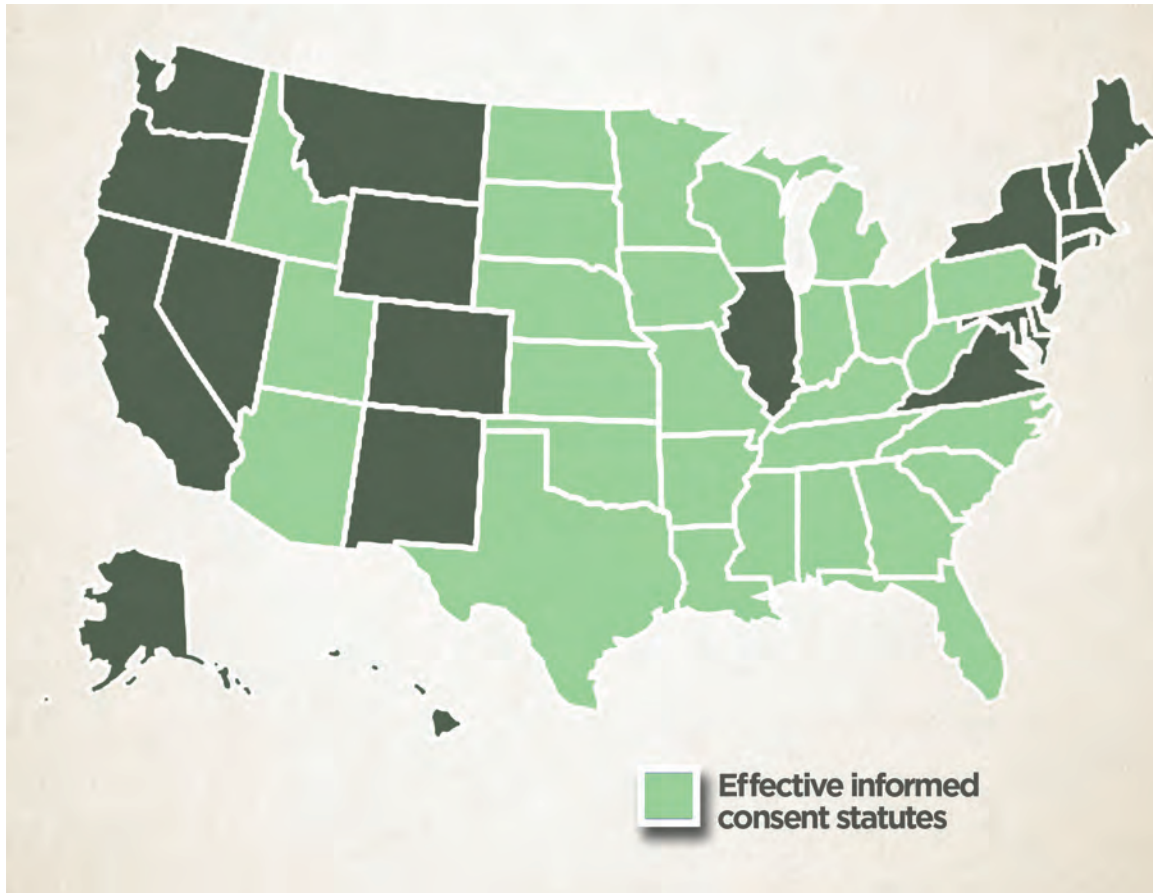


Informed consent laws that include a provision about viewing a baby on ultrasound prior to an abortion vary from state to state. Recently, some states have adopted National Right to Life's model "The Right to Know & See Act" that requires an ultrasound to be performed prior to the abortion and to simultaneously display the screen and provide a medical description of what the ultrasound is depicting. Other states have adopted an earlier model ultrasound provision "Opportunity to View" that would give mothers an opportunity to view the ultrasound of their unborn children. Often this information is presented in a manner that places the burden on the mother to ask to see the ultrasound of her baby or on a lengthy form in small-type font with a long list of additional information they must provide prior to the abortion. Some of these laws either require the ultrasound to be performed prior to the abortion, or provide this chance to view IF an ultrasound is performed prior to the abortion. Below is a comprehensive list of the type of law in each state.

Six states have adopted The Right to Know and See model. This requires that an ultrasound be performed prior to an abortion. The screen must be displayed so the mother can view it and a description of the image of the unborn child must be given. They are Arkansas, Kentucky, Louisiana, North Carolina*, Texas, and Wisconsin.

Seven states have adopted the "Opportunity to View" model. This requires that an ultrasound be performed and that the mother be offered the opportunity to view the ultrasound. They are Alabama, Arizona, Florida, Indiana, Iowa, Mississippi, Montana*. Eleven states require that the mother be provided with an opportunity to view an ultrasound **IF** ultrasound is used as part of the abortion process. They are Georgia, Idaho, Kansas, Michigan, Nebraska, Ohio, Oklahoma, South Carolina, Tennessee, Utah, and West Virginia. Four states require that the mother be provided with the opportunity to view an ultrasound but do not necessarily mandate that an ultrasound be performed. They are Missouri, North Dakota, South Dakota, and Wyoming.

A Woman's Right to Know: Informed Consent



An informed consent law protects a woman's right to know the medical risks associated with abortion, the positive alternatives to abortion, and to be provided with nonjudgmental, scientifically accurate medical facts about the development of her unborn child before making this permanent and life-affecting decision. If advocates of legal abortion were truly "pro-choice" instead of "pro-abortion," they would not object to allowing women with unexpected pregnancies access to all the facts. Perhaps they fear that full knowledge might lead to fewer abortions.

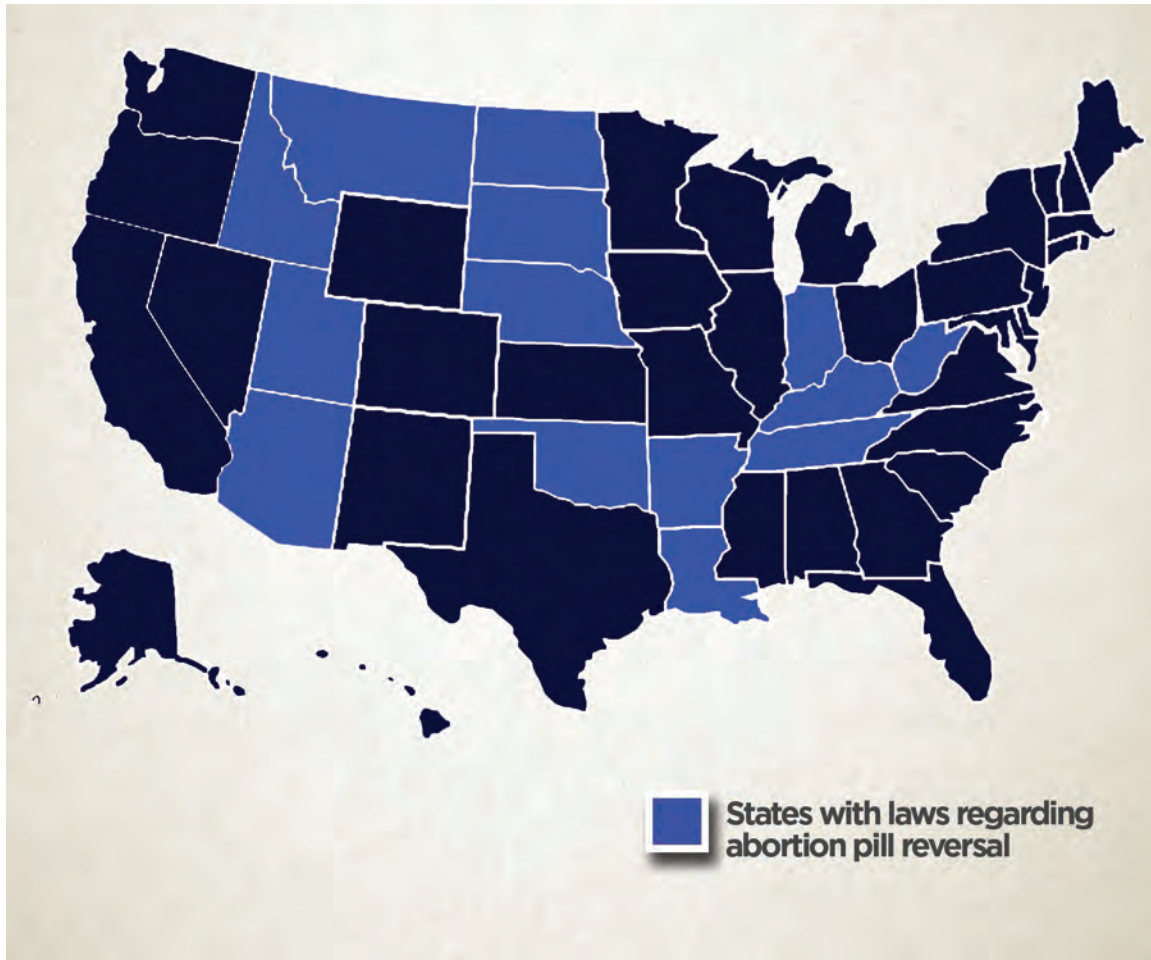
Twenty-eight states [using language like that upheld in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)] currently have effective informed consent laws in place: Alabama[^], Arizona, Arkansas, Florida, Georgia, Idaho, Indiana[^], Iowa^{**}, Kansas, Kentucky, Louisiana[^], Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania[^], South Carolina, South Dakota, Tennessee, Texas, Utah[^], West Virginia, and Wisconsin[^].

[^]The statutes in these six states (Alabama, Indiana, Louisiana, Pennsylvania, Utah, and Wisconsin) contain a loophole allowing the withholding of information when the physician believes that furnishing the information would result in an adverse effect on the physical or mental health of the patient.

For more detailed information visit: www.nrlc.org/uploads/stateleg/WRTKFactSheet.pdf

^{**} The 72-hour reflection period in Iowa is enjoined.

A Woman's Right to Know: Abortion Pill Reversal Laws



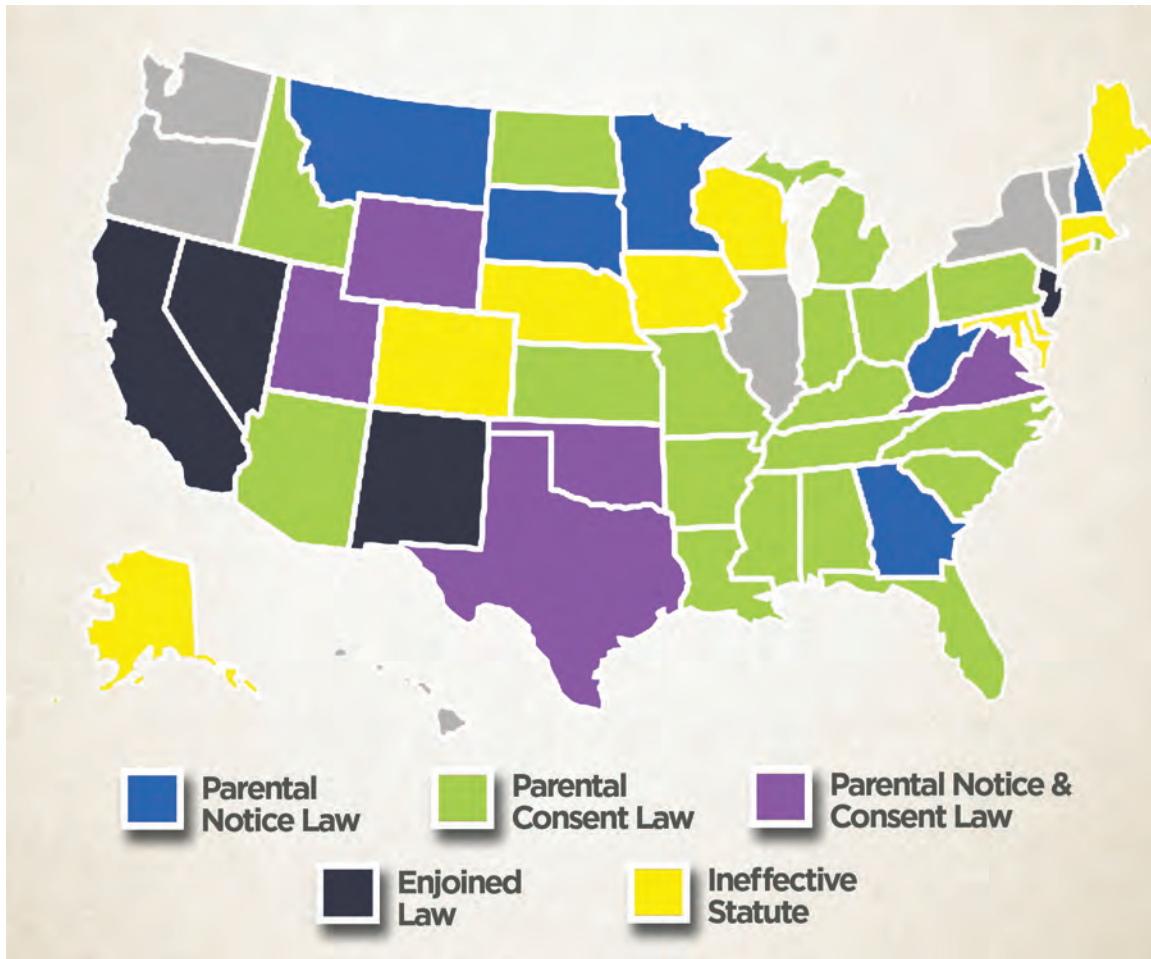
Most recently, states have moved to enact a form of informed consent law that requires abortion facilities to inform a woman prior to or soon after the first step of a chemical abortion that if she changes her mind, it may be possible to reverse the effects of the chemical abortion, but that time is of the essence. Currently, this protocol has saved over 2,500 babies.

For more detailed information on abortion pill reversal, visit <https://lifeatrisk.org/>

Currently fourteen states have enacted laws requiring this information to be provided: Arizona, Arkansas, Idaho, Indiana, Kentucky, Louisiana, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Tennessee, Utah, and West Virginia.

For more detailed information on these laws and litigation: www.nrlc.org/uploads/stateleg/AbortionPillReversalFactSheet.pdf

Parental Involvement Laws



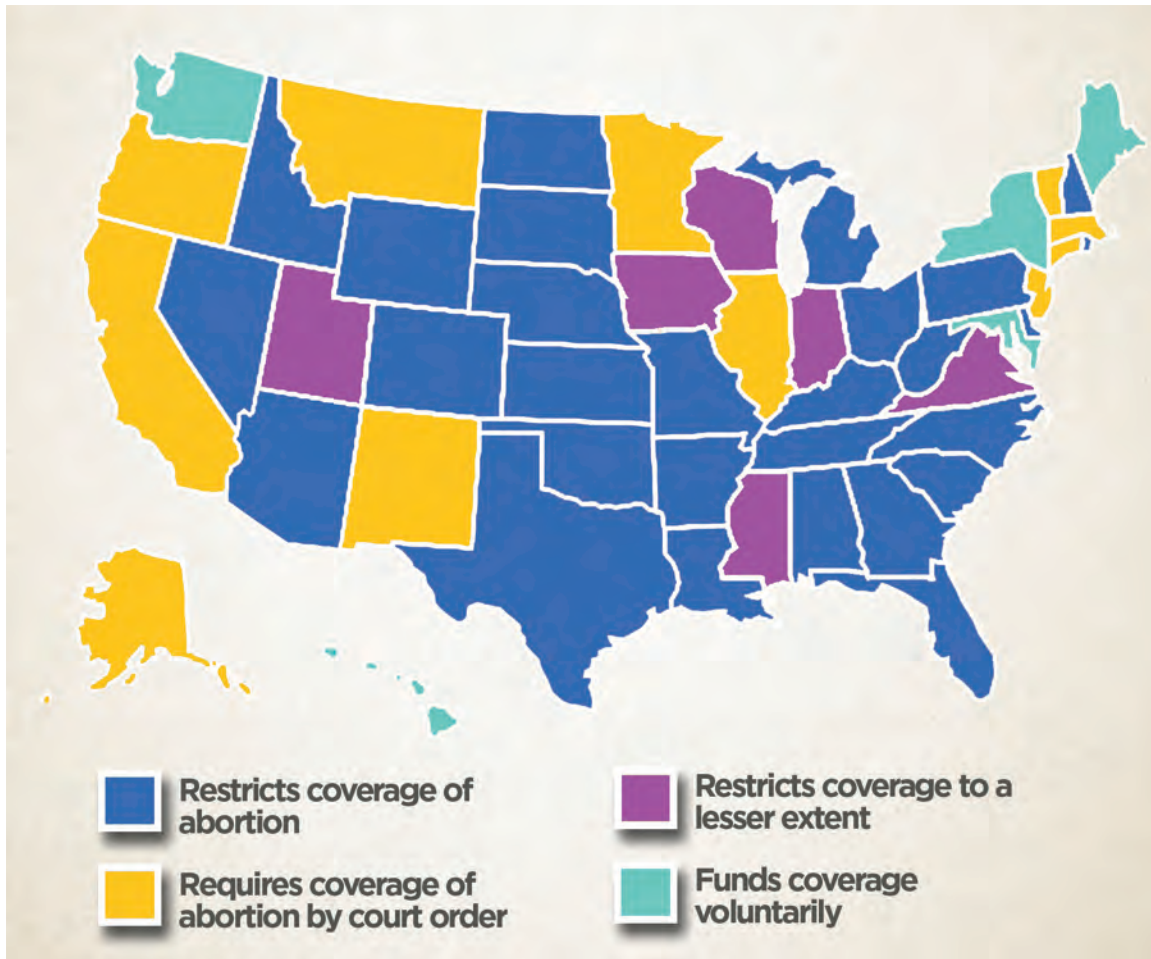
Most parental involvement laws require that abortionists either notify or obtain consent of a parent or guardian before a minor girl has an abortion. Studies show the positive impacts these laws have in significantly reducing the rates of abortion, birth, and pregnancy among minors. Public opinion polls consistently show strong support for parental involvement in a minor's abortion decision.

Six states have passed parental notice laws, 20 have parental consent laws, five states provide for parental notice and consent, and four states have laws that are enjoined.

Ten states have passed parental involvement laws that are deemed ineffective based on statutory language that may allow notification to be given to another adult family member instead of a parent, or provides that the abortionist himself may consent to the abortion on the minor's behalf, or contains some other language that undermines real parental involvement. These states include: Alaska, Colorado, Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Nebraska, and Wisconsin.

For more detailed information please visit: www.nrlc.org/uploads/stateleg/PIFSLegalwithMap.pdf

State Policies on Public Funding of Abortion

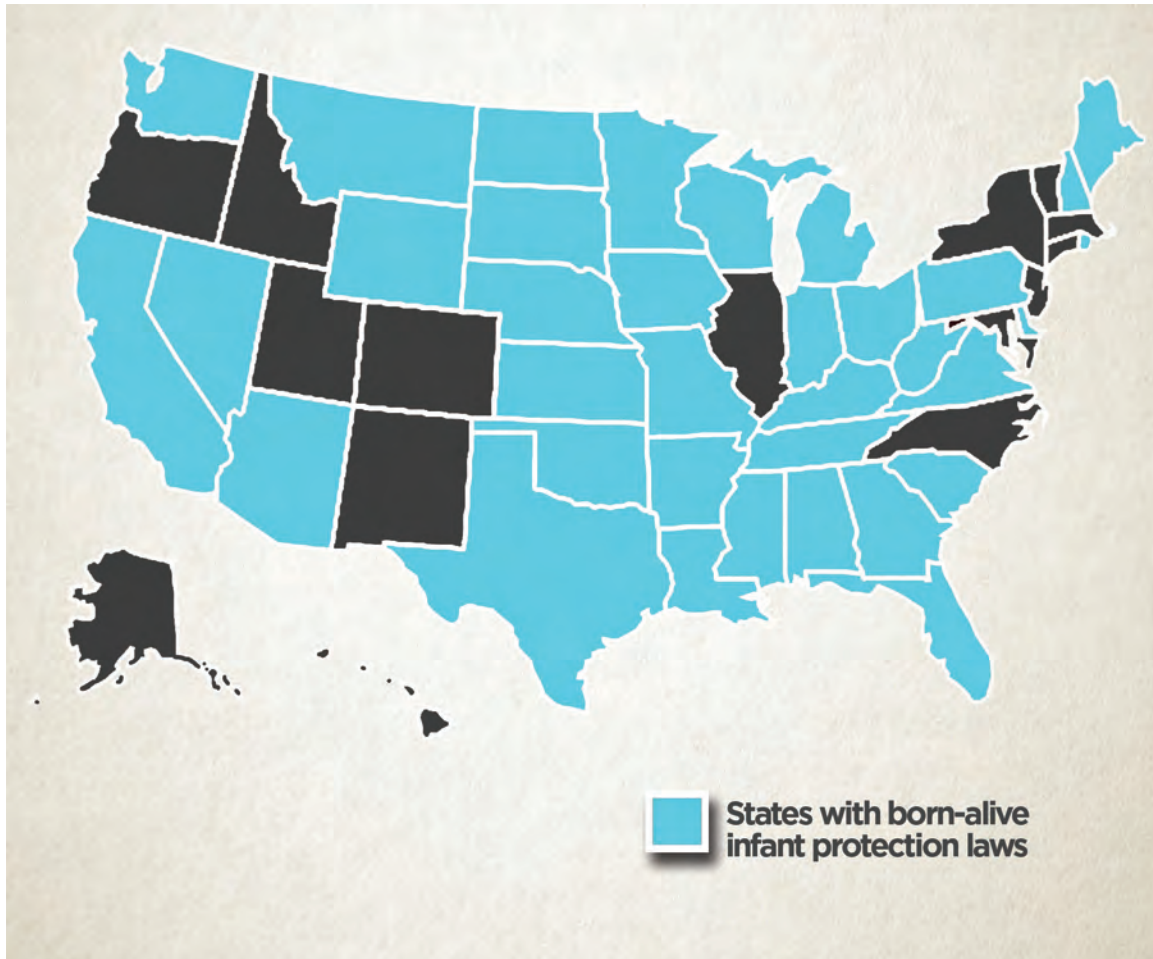


Prior to the enactment of the Hyde Amendment in 1976, the federal government paid for abortions through the Medicaid program. Between 1976 and 1980, the Hyde Amendment was enacted in several different forms. (During part of this period, its enforcement was blocked by federal court orders.) From June 1981 to October 1993, the Hyde Amendment allowed federal funding of abortion only when “the life of the mother would be endangered” if the unborn child were carried to term.

In 1993, Congress changed the Hyde Amendment to allow federal reimbursement for abortions performed in cases of rape and incest, in addition to life-of-mother cases. Some states attempted to continue to exclude coverage of the rape and incest categories, based on their state laws, but the federal courts uniformly ruled against such policies where they were challenged; today, only South Dakota limits Medicaid coverage to life-endangerment cases.

Currently, 16 states fund Medicaid coverage of abortion voluntarily or have laws in place requiring funding (of these, 11 are due to court decisions). Twenty-eight (28) states and the District of Columbia have laws that limit funding to cases of life endangerment, rape, and incest; six states limit abortion funding to a lesser extent.

Born-Alive Infant Protection Laws



Born-Alive Infant Protection laws vary by state. Some may only define what the term “born alive” means; some require that, when a baby is born alive following an abortion, health care practitioners must exercise the same degree of professional skill and care that would be offered to any other child born alive at the same gestational age. Some laws require that, following appropriate care, health care workers must transport the child immediately to a hospital, and report any violations.

Currently, 35 states have enacted laws to protect babies born alive during an abortion.

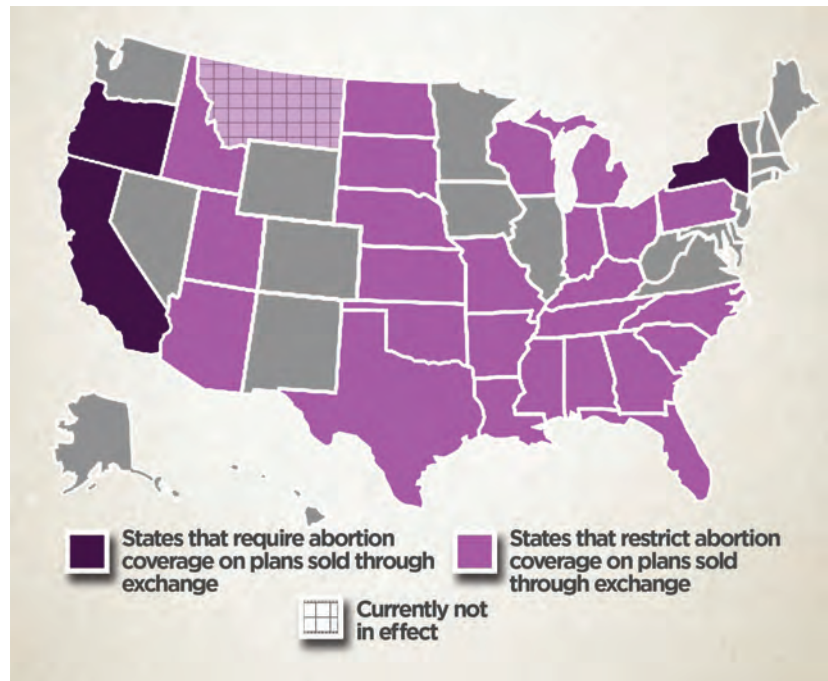
Preventing Taxpayer Subsidies for Abortion Coverage

The Obama health care law requires states to operate and maintain a “health insurance exchange” or the federal government will set one up for them. Health insurance plans offering abortion coverage are allowed to participate in a state’s exchange and to receive federal subsidies unless the state legislature enacts a law to restrict abortion coverage by exchange-participating plans (or unless a state already has a law preventing health insurance in the state from covering elective abortions, except by a separate rider). Specific language in the Obama health care law authorizes the states to prevent abortion coverage in the exchanges.

INSURANCE PLANS SOLD THROUGH THE EXCHANGE

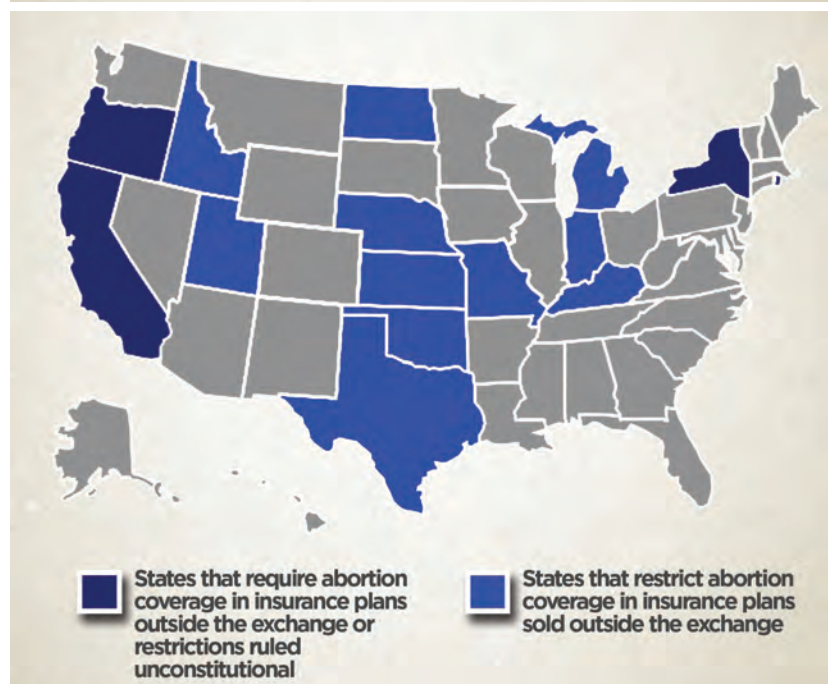
States that substantially prevent abortion coverage by plans in the exchange (as shown in map): Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana*, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, and Wisconsin.

*currently not in effect pending litigation



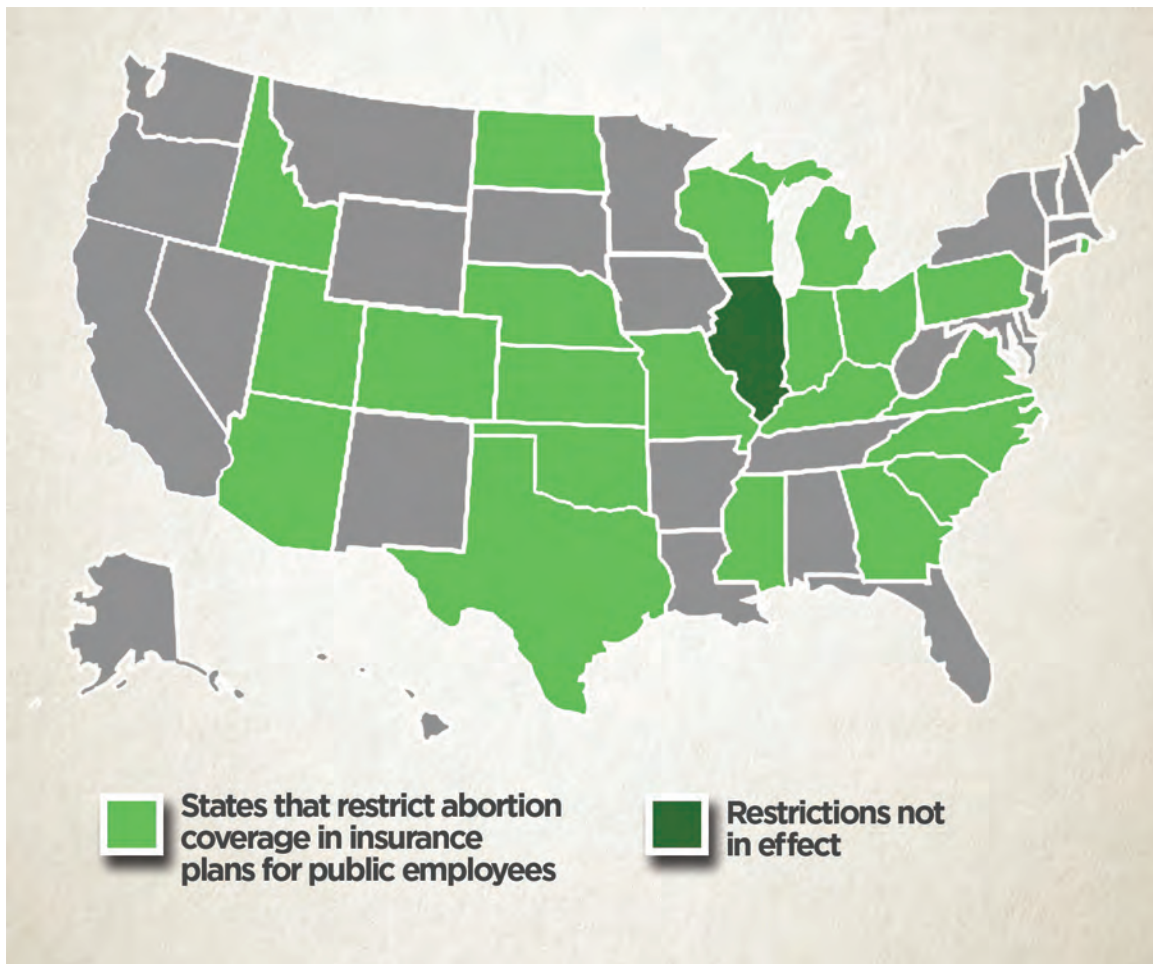
INSURANCE PLANS SOLD OUTSIDE THE EXCHANGE

Eleven (11) states prohibit elective abortion coverage for plans outside of the health insurance exchange: Idaho, Indiana, Kansas, Kentucky, Michigan, Missouri, Nebraska, North Dakota, Oklahoma, Texas, and Utah.



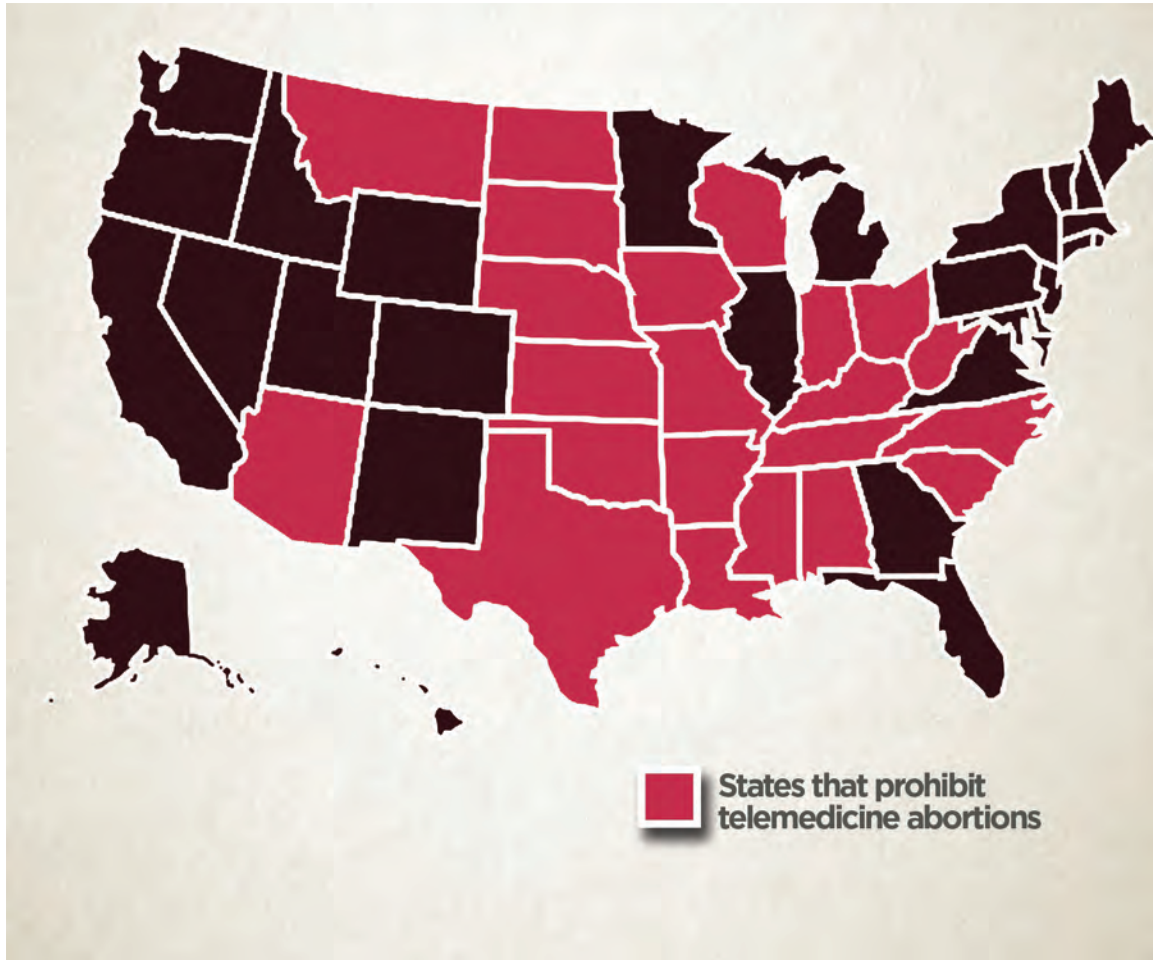
Preventing Taxpayer Subsidies for Abortion Coverage

INSURANCE PLANS FOR PUBLIC EMPLOYEES



Twenty-two states prohibit elective abortion coverage in insurance policies for public employees: Arizona, Colorado, Georgia, Idaho, Indiana, Kansas, Kentucky, Michigan, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Virginia, and Wisconsin.

Telemedicine Abortion Prohibitions



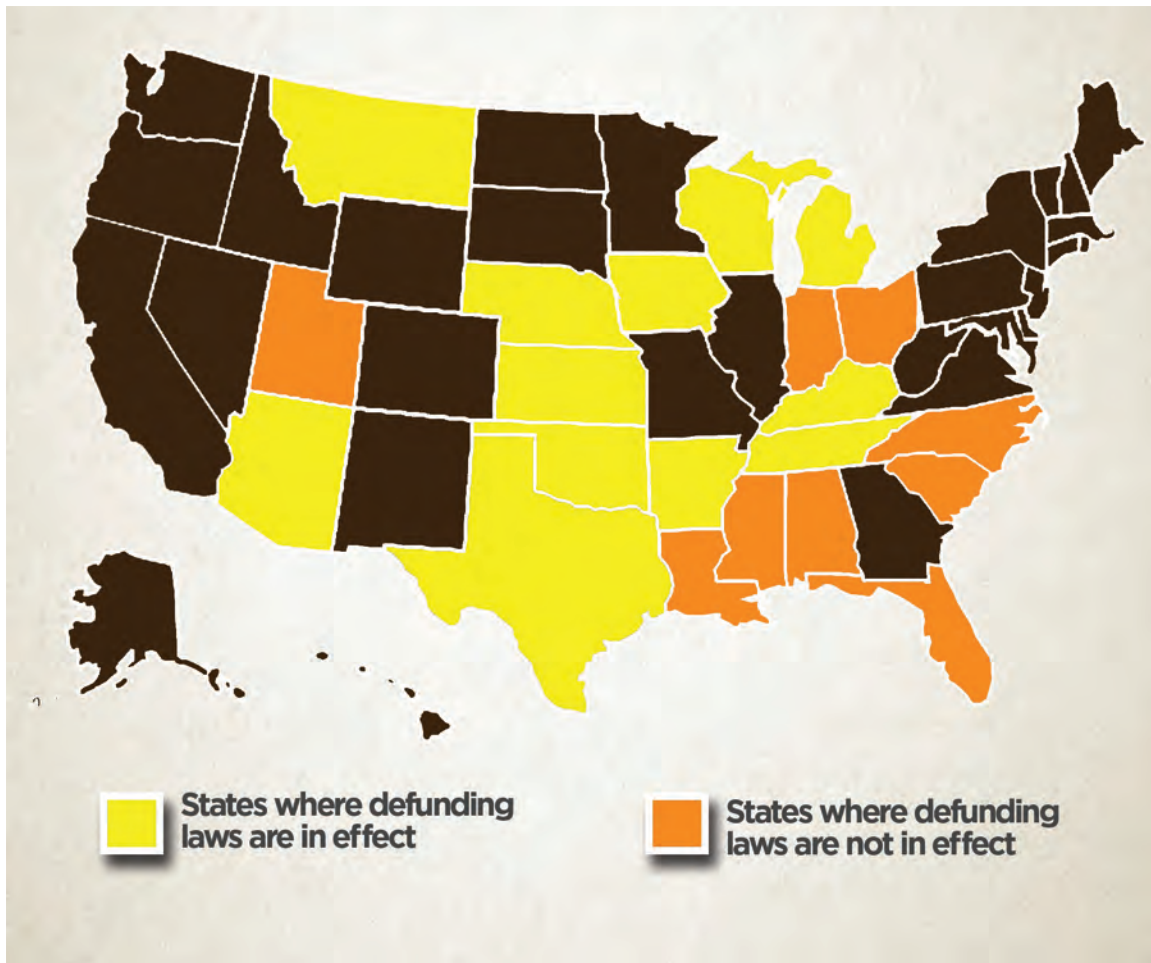
Telemedicine abortions are chemical abortions done via a video conferencing system where the abortionist is in one location and talks with a woman, who is in another location, over a computer video screen. The abortionist never sees the woman in person because they are never actually in the same room.

This important pro-life legislation prevents telemedicine abortions by requiring that, when mifepristone, misoprostol, or some other drug or chemical is used to induce an abortion, the abortion doctor who is prescribing the drug must be physically present, in person, when the drug is first provided to the pregnant woman. This allows for a physical examination to be done by the doctor, both to ascertain the state of the mother's health, and to be sure an ectopic pregnancy is not involved.

Currently, 22 states prohibit these telemedicine abortions; 4 are not in effect: Alabama, Arizona, Arkansas, Indiana, Iowa*, Kansas*, Kentucky, Louisiana, Mississippi, Missouri, Montana*, Nebraska, North Carolina, North Dakota, Ohio*, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, West Virginia, and Wisconsin.

*Iowa, Kansas, Ohio, and Montana laws are currently enjoined.

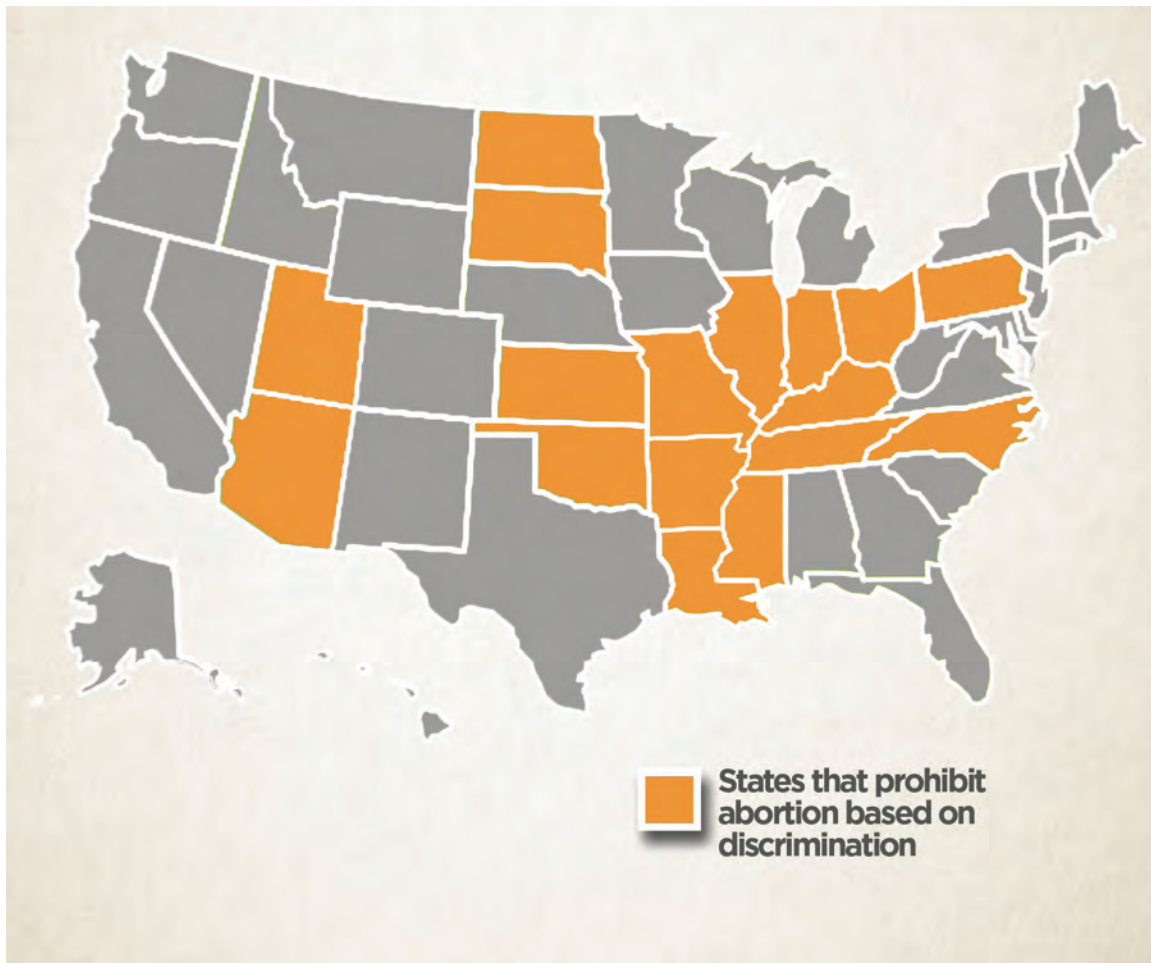
Defunding Abortion Giants



In recent years, several states have passed laws that attempt to defund abortion giants like Planned Parenthood — and similar abortion facilities — both directly and indirectly. Title X provides for Medicaid funds to be distributed to the states by the federal government for the purpose of supplementing family planning programs. The states contract with public and private entities to provide those family planning services. Legislators in some states have worked to restrict government funding to these facilities by refusing to contract with them, or any abortion facility or individual abortionist. Naturally, the minute a state passes legislation intent on defunding abortion facilities, the national abortion giants file suit against that state.

A total of 21 states have acted to prevent Title X funds from being distributed to abortion providers in their state. Of these, twelve are currently in effect (Arizona, Arkansas, Iowa, Kansas, Kentucky, Michigan, Montana, Nebraska, Oklahoma, Tennessee, Texas, and Wisconsin).

Anti-Discrimination Abortion Bans



These laws protect unborn babies from being aborted on account of their sex, race, and/or genetic disability. Sex Selection Abortion is a form of prenatal discrimination that wages a war typically on unborn baby girls. In April 2013, a poll taken by The Polling Company found that 85% of respondents supported banning sex selection abortions. Currently, seventeen (17) states have enacted laws protecting unborn children from discrimination based on their sex, race, and/or genetic disability. These states, in order of enactment, are: Illinois (1975)*, Pennsylvania (1982), Oklahoma (2010), Arizona (2011), North Dakota (2013)^, Kansas (2013), North Carolina (2013), South Dakota (2014), Indiana (2016)^, Louisiana (2016)**, Ohio (2017)**, Arkansas (2017)^, Kentucky (2019)^, Utah (2019)**, Mississippi (2020), Missouri (2020), and Tennessee (2020).

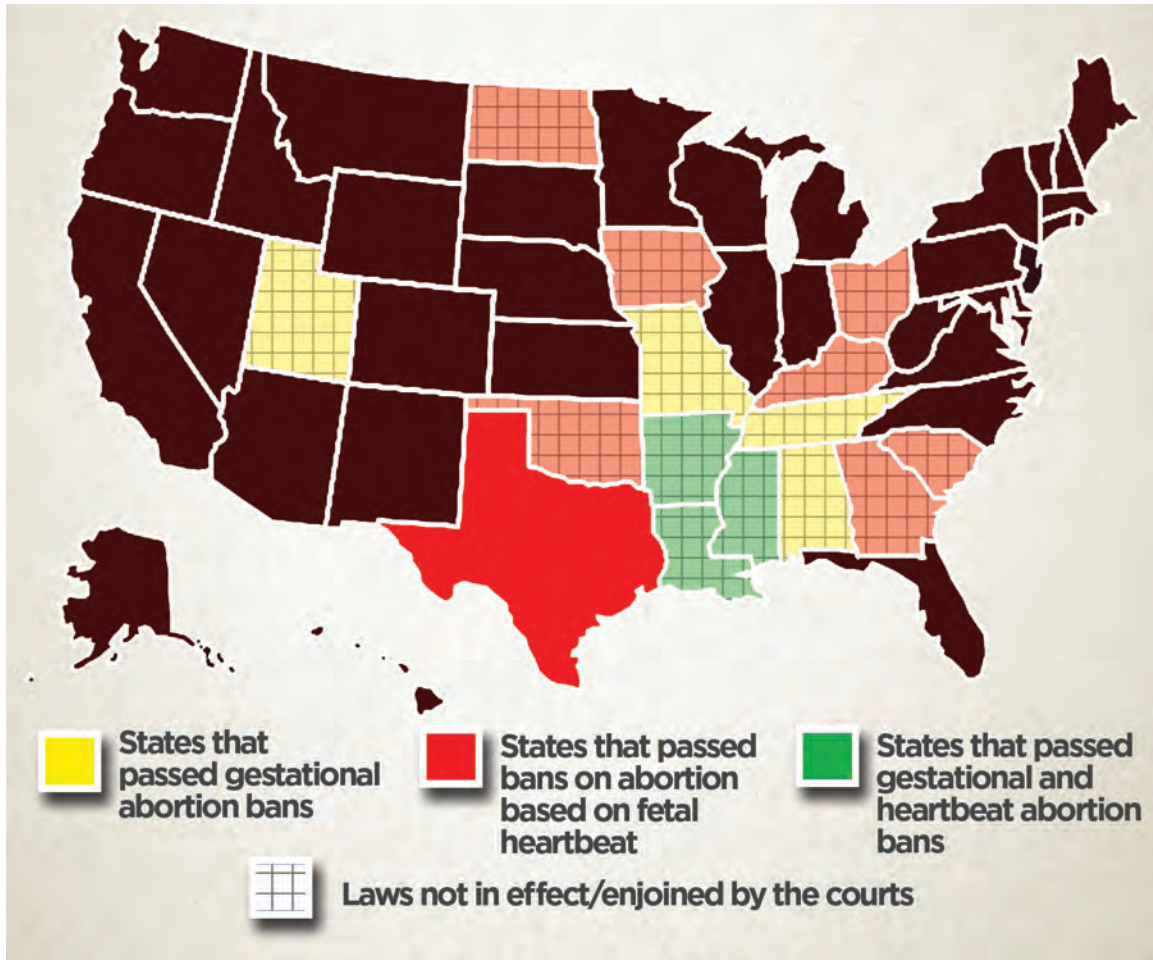
For more detailed information please visit: www.nrlc.org/uploads/stateleg/StateLawAntiDiscriminationAbortionBans.pdf

*"Enjoined only to extent that it subjects physicians to criminal liability for performing certain pre-viability abortions." Per consent decree, 1993

**These laws do not ban abortion based on sex-selection, but on a potential genetic anomaly like Down Syndrome.

^These laws also ban abortions due to a potential genetic anomaly like Down Syndrome.

Heartbeat Protection Laws & Time-Based Abortion Bans



Beginning in 2011, several states have attempted to pass laws protecting unborn children from abortion after the unborn child's heartbeat is detected or after a certain number of weeks of gestation. A total of eleven states (Arkansas*, Georgia, Iowa, Kentucky, Louisiana*, Mississippi*, North Dakota, Ohio, Oklahoma, South Carolina, and Texas) have passed laws prohibiting abortion after the unborn child's heartbeat is detected. All but Texas are currently either enjoined pending litigation or permanently blocked.

Seven states have passed laws banning abortion after a certain number of weeks of gestation (Arkansas*, Alabama^ Louisiana*, Mississippi*, Missouri, Tennessee, and Utah.) All are currently either enjoined pending litigation or permanently blocked.

*Arkansas, Louisiana, and Mississippi have each passed laws banning abortion based on both the detection of the unborn child's heartbeat and the gestational age of the unborn child. As noted above, these laws are currently either enjoined pending litigation or permanently blocked.

^In 2019, Alabama passed a law prohibiting abortion except to save the life of the mother, but also contained a loophole allowing abortion for mental health in certain circumstances. The law was enjoined before it became effective

For more detailed information please visit: www.nrlc.org/uploads/stateleg/EarlyAbortionandHeartbeatBans.pdf

THE SUPREME COURT & ABORTION

A Brief Synopsis of Cases



***Roe v. Wade* (1973)**

Relying on an unstated “right of privacy” found in a “penumbra” of the Fourteenth Amendment, when coupled with *Roe*’s companion case, *Doe v. Bolton* (below), the Court effectively legalized abortion on demand throughout the full nine months of pregnancy in this challenge to the Texas state law regarding abortion. Although the Court mentioned the state’s possible interest in the “potentiality of human life” in the third trimester, legislation to protect that interest would be gutted by mandated exceptions for the “health” of the mother (see *Doe* below).

***Doe v. Bolton* (1973)**

A companion case to *Roe*, which challenged the abortion law in Georgia, *Doe* broadly defined the “health” exception so that any level of distress or discomfort would qualify and gave the abortionist final say over what qualified: “The medical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman’s age—relevant to the well being of the patient. All these factors may relate to “health.” Because the application of the health exception was left to the abortionist, legislation directly prohibiting any abortion became practically unenforceable.

***Bigelow v. Virginia and Connecticut v. Menillo* (1975)**

Bigelow allowed abortion clinics to advertise. *Menillo* said that despite *Roe*, state prohibitions against abortion stood as applied to non-physicians. *Menillo* also said states could authorize non-physicians to perform abortions.

***Planned Parenthood of Central Missouri v. Danforth* (1976)**

The court rejected a parental consent requirement and decided that (married) fathers had no rights in the abortion decision. Furthermore, the Court struck down Missouri’s effort to ban the saline amniocentesis abortion procedure, in which salt injected into the womb slowly and painfully poisons the child.

***Maher v. Roe and Beal v. Doe* (1977)**

States are not required to fund abortions, though they can if they choose. A state can use funds to encourage childbirth over abortion.

Poelker v. Doe (1977)

In *Poelker*, the Court ruled that a state can prohibit the performance of abortions in public hospitals.

Colautti v. Franklin (1979)

Although *Roe* said states could pursue an interest in the “potential life” of the unborn child after viability (*Roe* placed this at the third trimester), the Court struck down a Pennsylvania statute that required abortionists to use the abortion technique most likely to result in live birth if the unborn child is viable.

Bellotti v. Baird (II)* (1979)

The Court struck down a Massachusetts law requiring a minor to obtain the consent of both parents before obtaining an abortion, and insisted that states needed to offer a “judicial bypass” exception by which the child could demonstrate her maturity to a judge or show that the abortion would somehow be in her best interest. *In *Bellotti v. Baird (I)* 1976, the Court returned the case to the state court on a procedural issue.

Harris v. McRae (1980)

The Court upheld the Hyde Amendment, which restricted federal funding of abortion to cases where the mother’s life was endangered (rape and incest exceptions were added in the 1990s). The Court said states could distinguish between abortion and “other medical procedures” because “no other procedure involves the purposeful termination of a potential life.” While the Court insisted that a woman had a right to an abortion, the state was not required to fund the exercise of that right.

Williams v. Zbaraz (1980)

The Court ruled that states are not required to fund abortions that are not funded by the federal government, but can opt to do so.

HL v. Matheson (1981)

Upholding a Utah statute, the Court ruled that a state could require an abortionist to notify one of the minor girl’s parents before performing an abortion without a judicial bypass.

City of Akron v. Akron Center for Reproductive Health (1983)

The Court struck down an ordinance passed by the City of Akron requiring: (1) that abortionists inform their clients of the medical risks of abortion, of fetal development, and of abortion alternatives; (2) a 24-hour waiting period after the first visit before obtaining an abortion; (3) that second- and third-trimester abortions be performed in hospitals; (4) one-parent parental consent with no judicial bypass; (5) and the “humane and sanitary” disposal of fetal remains. The Court later reversed some of this ruling in its 1992 decision in *Casey*.

Planned Parenthood Association of Kansas City v. Ashcroft (1983)

The Court upheld a Missouri law requiring that post-viability abortions be attended by a second physician and that a pathology report be filed for each abortion.

Simopoulous v. Virginia (1983)

The Court affirmed the conviction of an abortionist for performing a second-trimester abortion in an improperly licensed facility.

THE SUPREME COURT AND ABORTION

Thornburgh v. American College of Obstetricians and Gynecologists (1986)

The Court struck down a Pennsylvania law requiring: (1) that abortionists inform their clients regarding fetal development and the medical risks of abortion; (2) reporting of information about the mother and the unborn child for second- and third-trimester abortions; (3) that the physician use the method of abortion most likely to preserve the life of a viable unborn child; and (4) the attendance of a second physician in post-viability abortions. The Court later reversed some of this ruling in its 1992 decision in *Casey*.

Webster v. Reproductive Health Services (1989)

The Court upheld a Missouri statute prohibiting the use of public facilities or personnel for abortions and requiring abortionists to determine the viability of the unborn child after 20 weeks.

Hodgson v. Minnesota and Ohio v. Akron Center for Reproductive Health (1990)

In *Hodgson*, the Court struck down a Minnesota statute requiring two-parent notification without a judicial bypass, but upheld the same provision with a judicial bypass. In the same decision, the Court allowed a 48-hour waiting period for minors following parental notification. In *Ohio v. Akron*, the Court upheld one-parent notification with judicial bypass.

Rust v. Sullivan (1991)

In *Rust*, the Court upheld a federal regulation prohibiting projects funded by the federal Title X program from counseling or referring women regarding abortion. If a clinic physically and financially separated abortion services from family planning services, the family planning component could still receive Title X money. Relying on *Maher* and *Harris*, the Court emphasized that the government is not obliged to fund abortion-related services, even if it funds prenatal care or childbirth.

Planned Parenthood of Southern Pennsylvania v. Casey (1992)

To the surprise of many observers, the Court narrowly (5-4) reaffirmed what it called the “central holding” of *Roe*, that “a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability.” However, the Court also indicated a shift in its doctrine that would allow more in the way of state regulation of abortion, including previability regulations: “We reject the rigid trimester framework of *Roe v. Wade*. To promote the State’s profound interest in potential life, throughout pregnancy the State may take measures to ensure that the woman’s choice is informed, and measures designed to advance this interest will not be invalidated as long as their purpose is to persuade the woman to choose childbirth over abortion. These measures must not be an undue burden on the right.” Applying this “undue burden” doctrine, the Court explicitly overruled parts of *Akron* and *Thornburgh*, and allowed informed consent requirements (that the woman be given information on the risks of abortion and on fetal development), a mandatory 24-hour waiting period following receipt of the information, the collection of abortion statistics, and a required one-parent consent with judicial bypass. A spousal notification requirement, however, was held to be unconstitutional.

Mazurek v. Armstrong (1997)

The Court upheld a Montana law requiring that only licensed physicians perform abortions.

THE SUPREME COURT AND ABORTION

Stenberg v. Carhart (2000)

Nebraska (as did more than half the other states) passed a law to ban partial-birth abortion, a method in which the premature infant (usually in the fifth or sixth month) is delivered alive, feet first, until only the head remains in the womb. The abortionist then punctures the baby’s skull and removes her brain. On a 5-4 vote, the Court struck down the Nebraska law (and thereby rendered the other state laws unenforceable as well). The five justices said that the Nebraska legislature had defined the method too vaguely. In addition, the five justices held that *Roe v. Wade* requires that an abortionist be allowed to use even this method, even on a healthy woman, if he believes it is the safest method.

Gonzales v. Carhart (2007)

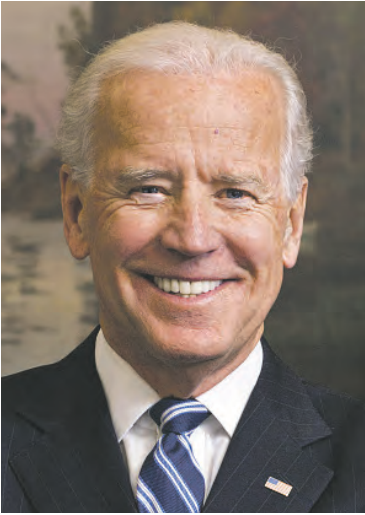
By a vote of 5-4, the Court in effect largely reversed the 2000 *Stenberg* decision, rejecting a facial challenge to the federal Partial-Birth Abortion Ban Act, enacted by Congress in 2003. This law places a nationwide ban on use of an abortion method—either before or after viability — in which a baby is partly delivered alive before being killed. In so doing, the Court majority, in the view of legal analysts on both sides of the abortion issue, opened the door to legislative recognition of broader interests in protection of unborn human life, and signaled a willingness to grant greater deference to the factual and value judgments made by legislative bodies, within certain limits.

Whole Woman’s Health v. Hellerstedt (2016)

By a vote of 5-3, the Court declared unconstitutional Texas laws requiring abortion clinics to meet surgical-center standards, and requiring abortionists to have admitting privileges at a hospital within 30 miles. The majority ruled that these requirements constituted an “undue burden” on access to previability abortions. In his dissent, Justice Clarence Thomas wrote, “[T]he majority’s undue-burden balancing approach risks ruling out even minor, previously valid infringements on access to abortion.”

June Medical Services LLC v Russo (2020)

In a 5-4 decision, the Court struck Louisiana’s 2014 “Unsafe Abortion Protection Act” or Act 620 that required abortionists to have admitting privileges to a hospital within 30 miles of an abortion clinic — similar to the requirement already in place for doctors who perform surgery at outpatient surgical centers. The majority declared it “an undue burden” and likened it to their decision in *Hellerstedt*. However, the Court seemingly restored the “undue burden” precedent established in *Planned Parenthood of Southeastern Pennsylvania v. Casey*.



THE PRESIDENTIAL RECORD ON LIFE

President Joseph R. Biden 2021-present

“Number one, we don’t know exactly what [Amy Coney Barrett] will do, although the expectation is that she very well may overrule Roe, and the only responsible response to that would be to pass legislation to make Roe the law of the land. That’s what I would do.”

-Joseph R. Biden

- **Mexico City Policy:** In one of his first acts in office, President Biden repealed the “Mexico City Policy,” which prevents tax funds from being given to organizations that perform abortions or lobby to change the abortion laws of host countries.
- **Chemical Abortion:** President Biden’s Food and Drug Administration (FDA) suspended protections established for women undergoing chemical abortions, such as seeing the abortionist in person. The in-person requirement ensured that complications, such as an ectopic pregnancy, are ruled out in advance of a woman undergoing a chemical abortion. Mifepristone, the “abortion pill,” has no effect on an ectopic pregnancy and leaves the woman with this life-threatening medical condition.
- **Funding Abortion Providers:** During the Administration’s first 100 days, President Biden’s Health and Human Services Department began the process of overturning the “Protect Life Rule” on Title X family planning funding. That rule ensured Title X funding would not go to facilities that perform or refer for abortions.
- **Fetal Tissue Research:** Under President Biden, the National Institutes of Health reversed Trump Administration regulations and announced that it will again fund intramural research and will no longer convene the Human Fetal Tissue Research Ethics Advisory Board for extramural research.
- **Abortion Funding:** Though he long supported the Hyde Amendment in the past, as a presidential candidate, President Biden changed his position in 2019. President Biden is now on record in support of eliminating the Hyde Amendment which prevents the use of federal funds to pay for abortions except in cases of rape, incest or to save the life of the mother. He signed the \$1.9 Trillion Reconciliation Package which included billions of dollars available for taxpayer-funded abortions.
- **Appointments:** President Biden has surrounded himself with stalwart pro-abortion public officials, including Vice President Kamala Harris. His cabinet appointments include pro-abortion former congressman and former California Attorney General Xavier Becerra to head Health & Human Services, pro-abortion activist Samantha Power to head the U.S. Agency for International Development and Chiquita Brooks-LaSure, who consulted for Planned Parenthood during the 2020 elections, to lead the Centers for Medicare and Medicaid Services.
- **Supreme Court:** By Executive Order, President Biden created a commission to examine “reforms” to the Supreme Court and the federal judiciary, including the possibility of expanding the number of justices serving on the U.S. Supreme Court.



THE PRESIDENTIAL RECORD ON LIFE

President Donald J. Trump 2017-2021

“America, when it is at its best, follows a set of rules that have worked since our Founding. One of those rules is that we, as Americans, revere life and have done so since our Founders made it the first, and most important, of our ‘unalienable’ rights.”

-President Donald J. Trump

- **Supreme Court:** President Trump appointed Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett to the U.S. Supreme Court. These appointments are consistent with the belief that federal courts should enforce the rights truly based on the text and history of the Constitution, and otherwise leave policy questions in the hands of elected legislators.
- **Mexico City Policy:** President Trump restored the “Mexico City Policy,” which prevents tax funds from being given to organizations that perform abortions or lobby to change the abortion laws of host countries. He later expanded the policy as the “Protecting Life in Global Health Policy” to prevent \$9 billion in foreign aid from being used to fund the global abortion industry.
- **Abortion Funding:** In 2017, President Trump issued a statement affirming his strong support for the No Taxpayer Funding for Abortion Act, saying he “would sign the bill.” The bill would permanently prohibit any federal program from funding elective abortion.
- **Funding Abortion Providers:** In 2018, President Trump’s Health and Human Services Department issued regulations to ensure Title X funding did not go to facilities that perform or refer for abortions. In 2017 President Trump signed a resolution into law that overturned an eleventh-hour regulation by the Obama administration that prohibited states from defunding certain abortion facilities in their federally-funded family planning programs.
- **Protecting Pro-Life Policies:** President Trump had pledged “to veto any legislation that weakens current pro-life federal policies and laws, or that encourages the destruction of innocent human life at any stage.”
- **Appointments:** President Trump appointed numerous pro-life advocates in his administration and cabinet including Counselor to the President Kellyanne Conway, Secretary of State Mike Pompeo, Secretary of Education Betsy DeVos, Secretary of Energy Rick Perry, United Nations Ambassador Nikki Haley, Secretary of Housing and Urban Development Ben Carson, and Chief of Staff Reince Priebus.
- **Defunding Planned Parenthood:** President Trump supported directing funding away from Planned Parenthood, the nation’s largest abortion provider. In a September 2016 letter to pro-life leaders, he noted that “I am committed to... defunding Planned Parenthood as long as they continue to perform abortions, and re-allocating their funding to community health centers that provide comprehensive health care for women.”
- **International Abortion Advocacy:** The Trump Administration cut off funding for the United Nations Population Fund due to that agency’s involvement in China’s forced abortion program. Additionally, President Trump instructed the Secretary of State to apply pro-life conditions to a broad range of health-related U.S. foreign aid.
- **Protecting the Unborn:** President Trump supported the Pain-Capable Unborn Child Protection Act. This legislation extends protection to unborn children who are at least 20 weeks because by this point in development (and probably earlier), the unborn have the capacity to experience excruciating pain during typical abortion procedures.



THE PRESIDENTIAL RECORD ON LIFE

President Barack Obama 2009-2017

On January 22, 2011, the 38th anniversary of the Roe v. Wade Supreme Court ruling that legalized abortion on demand, President Obama issued an official statement heralding Roe as an affirmation of “reproductive freedom,” and pledging, “I am committed to protecting this constitutional right.”

- **Supreme Court:** President Obama appointed pro-abortion advocates Sonia Sotomayor (2009) and Elena Kagan (2010) to the U.S. Supreme Court. Both have consistently voted on the pro-abortion side since joining the Supreme Court.
- **Late Abortions:** President Obama threatened to veto the Pain-Capable Unborn Child Protection Act, a bill to protect unborn children from abortion after 20 weeks fetal age, with certain exceptions.
- **Born-Alive Infants:** President Obama threatened to veto the Born-Alive Abortion Survivors Protection Act (H.R. 3504), a bill to require that a baby born alive during an abortion must be afforded “the same degree” of care that would apply “to any other child born alive at the same gestational age,” and to apply federal murder penalties to anyone who performs “an overt act that kills” such a born-alive child. The White House said such a law “would likely have a chilling effect” on provision of “abortion services.” (September 15, 2015)
- **Sex-Selection Abortion:** In May 2012, the White House announced President Obama’s opposition to a bill (H.R. 3541) to prohibit the use of abortion to kill an unborn child simply because the child is not of the sex desired by the parents. The White House said that the government should not “intrude” on “private family matters.”
- **Embryo-Destroying Research:** By executive order, President Obama opened the door to funding of research that requires the killing of human embryos.
- **Funding Abortion Providers:** In January 2016, President Obama vetoed an entire budget reconciliation bill that would have blocked, for one year, most federal funding of Planned Parenthood, the nation’s largest abortion provider.
- **Health Care Law:** In 2010, President Obama narrowly won enactment of a massive health care law (“ObamaCare”) that has resulted in federal funding of over 1,000 health plans that pay for elective abortion, and opened the door to large-scale rationing of lifesaving medical care. Obama actively worked with pro-abortion members of Congress to prevent effective pro-life language from becoming part of the final law, and failed to enforce even weak provisions written into the law.
- **Abortion Funding:** The Obama Administration failed to enforce some long-standing laws restricting federal funding health plans that cover elective abortion, and threatened vetoes of bills that would strengthen safeguards against federal funding of abortion (such as the No Taxpayer Funding for Abortion Act), on grounds that such limitations interfere with “health care choices.”
- **International Abortion Advocacy:** In 2009, President Obama ordered U.S. funding of private organizations that perform and promote abortion overseas. While serving as his Secretary of State, Hillary Clinton told Congress that the Administration would advocate world-wide that “reproductive health includes access to abortion.”
- **Conscience Protection:** The Obama Administration engaged in sustained efforts to force health care providers to provide drugs and procedures to which they have moral objections, and refused to enforce the federal law (Weldon Amendment) that prohibits states from forcing health care providers to participate in providing abortions.



THE PRESIDENTIAL RECORD ON LIFE

President George W. Bush 2001-2009

“The promises of our Declaration of Independence are not just for the strong, the independent, or the healthy. They are for everyone -- including unborn children. We are a society with enough compassion and wealth and love to care for both mothers and their children, to see the promise and potential in every human life.”

-President George W. Bush

- President Bush appointed two justices to the U.S. Supreme Court, Chief Justice John Roberts and Justice Samuel Alito. In 2007, both justices voted to uphold the federal Partial-Birth Abortion Ban Act.
- In 2003, President Bush signed into law the Partial-Birth Abortion Ban Act. When legal challenges to the law were filed, his Administration successfully defended the law and it was upheld by the U.S. Supreme Court.
- President Bush also signed into law several other crucial pro-life measures, including the Unborn Victims of Violence Act, which recognizes unborn children as victims of violent federal crimes; the Born-Alive Infants Protection Act, which affords babies who survive abortions the same legal protections as babies who are spontaneously born prematurely; and legislation to prevent health care providers from being penalized by the federal, state, or local governments for not providing abortions.
- In 2007, President Bush sent congressional Democratic leaders letters in which he said that he would veto any bill that weakened any existing pro-life policy. This strong stance prevented successful attacks on the Hyde Amendment and many other pro-life laws during 2007 and 2008.
- The Administration issued a regulation recognizing an unborn child as a “child” eligible for health services under the State Children’s Health Insurance Program (SCHIP).
- In 2001, President Bush declared that federal funds could not be used for the type of stem cell research that requires the destruction of human embryos. He used his veto twice to prevent enactment of bills that would have overturned this pro-life policy. The types of adult stem cell research that the President promoted, which do not require the killing of human embryos, realized major breakthroughs during his administration.
- The Bush Administration played a key role in the United Nations, in adoption by the UN General Assembly of the historic UN declaration calling on member nations to ban all forms of human cloning (2005), and including language in the Convention (Treaty) on the Rights of Persons with Disabilities, which protects persons with disabilities from being denied food, water, and medical care (2006).
- President Bush strongly advocated a complete ban on human cloning, and helped defeat “clone and kill” legislation.
- President Bush restored and enforced the “Mexico City Policy,” which prevented tax funds from being given to organizations that perform or promote abortion overseas. The President’s veto threats blocked congressional attempts to overturn this policy. The Administration also cut off funding for the United Nations Population Fund, due to that agency’s involvement in China’s compulsory-abortion program.

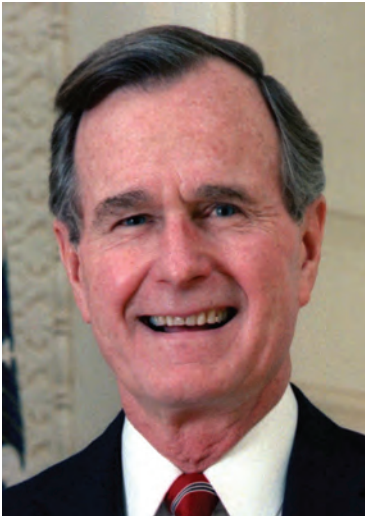


THE PRESIDENTIAL RECORD ON LIFE

President William Clinton 1993-2001

President Bill Clinton said he has “always been pro-choice” and has “never wavered” in his “support for Roe v. Wade.” “I have believed in the rule of Roe v. Wade for 20 years since I used to teach it in law school.”

- President Clinton urged the Supreme Court to uphold *Roe v. Wade*.
- The Clinton Administration endorsed the so-called “Freedom of Choice Act,” (a bill to prohibit states from limiting abortion even if *Roe* is overturned). FOCA was defeated in Congress.
- The Clinton Administration urged Congress to make abortion a part of a mandatory national health insurance “benefits package,” forcing all taxpayers to pay for virtually all abortions. The Clinton Health Care legislation died in Congress.
- President Clinton unsuccessfully attempted to repeal the Hyde Amendment, the law that prohibits federal funding of abortion except in rare cases.
- President Clinton twice used his veto to kill legislation that would have placed a national ban on partial-birth abortions.
- President Clinton ordered federally-funded family planning clinics to counsel and refer for abortion.
- The Clinton Administration ordered federal funding of experiments using tissue from aborted babies. President Clinton’s appointees proposed using federal funds for research in which human embryos would be killed.
- President Clinton ordered U.S. military facilities to provide abortions.
- President Clinton ordered his appointees to facilitate the introduction of RU-486 in the U.S.
- The Clinton Administration resumed funding to the pro-abortion UNFPA, which participates in management of China’s forced abortion program.
- President Clinton restored U.S. funding to pro-abortion organizations in foreign nations. His administration declared abortion to be a “fundamental right of all women,” and ordered U.S. ambassadors to lobby foreign governments for abortion.
- The Clinton Administration’s representatives to the United Nations and to U.N. meetings worked to establish an international “right” to abortion.



THE PRESIDENTIAL RECORD ON LIFE

President George H.W. Bush 1989-1993

“Since 1973, there have been about 20 million abortions. This a tragedy of shattering proportions.”

*“The Supreme Court’s decision in *Roe v. Wade* was wrongly decided and should be overturned.”*

-President George H.W. Bush

- The Bush Administration urged the Supreme Court to overturn *Roe v. Wade* and allow states to pass laws to protect unborn children, stating “protection of innocent human life -- in or out of the womb -- is certainly the most compelling interest that a State can advance.”
- President Bush opposed the “Freedom of Choice Act,” a bill which, he said, “would impose on all 50 states an unprecedented regime of abortion on demand, going well beyond *Roe v. Wade*.” The President pledged, “It will not become law as long as I am President of the United States.”
- President Bush vowed, “I will veto any legislation that weakens current law or existing regulations” pertaining to abortion. He vetoed 10 bills that contained pro-abortion provisions, including four appropriations bills which allowed for taxpayer funding of abortion.
- President Bush vetoed U.S. funding of the UNFPA, citing the agency’s participation in the management of China’s forced abortion program.
- President Bush strongly defended the “Mexico City Policy,” which cut off U.S. foreign aid funds to private organizations that performed or promoted abortion overseas. Three separate legal challenges to the policy by pro-abortion organizations were defeated by the Administration in federal courts.
- President Bush prohibited 4,000 federally-funded family planning clinics from counseling and referring for abortions.
- President Bush steadfastly refused to fund research that encouraged or depended on abortion, including transplantation of tissues harvested from aborted babies.
- The Bush Administration prohibited personal importation of the French abortion pill, RU-486.
- The Bush Administration prohibited the performance of abortion on U.S. military bases, except to save the mother’s life and fought Congressional attempts to reverse this policy.



THE PRESIDENTIAL RECORD ON LIFE

President Ronald Reagan 1981-1989

“My administration is dedicated to the preservation of America as a free land, and there is no cause more important for preserving that freedom than affirming the transcendent right to life of all human beings, the right without which no other rights have meaning.”

-President Ronald Reagan

- President Reagan supported legislation to challenge *Roe v. Wade*, the 1973 Supreme Court decision that legalized abortion on demand.
- President Reagan adopted the “Mexico City Policy,” which cut off U.S. foreign aid funds to private organizations that performed or promoted abortion overseas.
- The Reagan Administration cut off funding to the United Nations Fund for Population Activities (UNFPA) because that agency violated U.S. law by participating in China’s compulsory abortion program.
- The Reagan Administration adopted regulations to prohibit federally-funded “family planning” clinics from promoting abortion as a method of birth control.
- The Reagan Administration blocked the use of federal funds for research using tissue from aborted babies.
- The Reagan Administration helped win enactment of the Danforth Amendment which established that federally-funded education institutions are not guilty of “sex discrimination” if they refuse to pay for abortions.
- President Reagan introduced the topic of fetal pain into public debate.
- The Reagan Administration played a key role in enactment of legislation to protect the right to life of newborns with disabilities and signed the legislation into law.
- President Reagan designated a National Sanctity of Human Life Day in recognition of the value of human life at all stages.
- President Reagan wrote a book entitled *Abortion and the Conscience of a Nation*, in which he made the case against legal abortion and in favor of overturning *Roe v. Wade*.



The mission of National Right to Life is to protect and defend the most fundamental right of humankind, the right to life of every innocent human being from the beginning of life to natural death. America's first document as a new nation, The Declaration of Independence, states that we are all "created equal" and endowed by our Creator "with certain unalienable Rights, that among these are Life..." Our nation's founders emphasized the preeminence of the right to "Life" by citing it first among the unalienable rights this nation was established to secure.

National Right to Life welcomes all people to join us in this great cause. Our nation-wide network of affiliated state groups, thousands of community chapters, hundreds of thousands of members and millions of individual supporters all across the country act on the information they receive from us.

The strength of National Right to Life is derived from our broad base of diverse, dedicated people, united to focus on one issue, the right to life itself. Since National Right to Life's founding in 1968 as the first nationwide right to life group, it has dedicated itself entirely to defending life, America's first right.

Founded in 1968, National Right to Life is the nation's oldest and largest national pro-life group. National Right to Life works to protect innocent human life threatened by abortion, infanticide, assisted suicide, euthanasia, and embryo-killing research. National Right to Life is a non-partisan, non-sectarian federation of state affiliates and more than 3,000 local chapters. National Right to Life is governed by a representative board of directors with a delegate from each state affiliate, as well as nine directors elected at-large.

National Right to Life's efforts center around the following policy areas:

Abortion: Abortion stops a beating heart more than 2,400 times a day. National Right to Life works to educate Americans on the facts of fetal development and the truth about abortion; works to enact legislation protecting unborn children and providing abortion alternatives in Congress and state legislatures; and supports activities which help women choose life-affirming alternatives to abortion.

Infanticide: National Right to Life works to protect newborn and young children whose lives are threatened and who are discriminated against simply because they have a disability.

Euthanasia: National Right to Life and its Robert Powell Center for Medical Ethics works against the efforts of the pro-death movement to legalize assisted suicide or euthanasia including health care discrimination against people on the basis of age, disability, or based on an ethic which says that certain persons do not deserve to live because of a perceived "low quality of life." National Right to Life also makes available to individuals the Will to Live, a pro-life alternative to the Living Will.

National Right to Life works to restore protection for human life through the work of:

- the **National Right to Life Committee (NRLC)**, which provides leadership, communications, organizational lobbying, and legislative work on both the federal and state levels.
- the **National Right to Life Political Action Committee (NRL PAC)**, founded in 1979, is a pro-life political action committee, which works to elect, on the state and federal level, officials who respect democracy's most precious right, the right to life.
- the **National Right to Life Victory Fund**, an independent expenditure political action committee founded in 2012 with the express purpose of electing a pro-life president and electing pro-life majorities in the U.S. House of Representatives and U.S. Senate.
- the **National Right to Life Educational Trust Fund** and the **National Right to Life Educational Foundation, Inc.**, which prepare and distribute a wide range of educational materials, advertisements, and pro-life educational activities.
- **outreach efforts** to groups affected by society's lack of respect for human life: the disability rights community; the post-abortion community; the Hispanic and African-American communities; the community of faith; and the *Roe* generation— young people who are missing brothers, sisters, classmates, and friends.
- **National Right to Life NEWS** – published daily Monday-Saturday and available at www.nationalrighttolifeneeds.org, is the pro-life news source of record providing a variety of news stories and commentaries about right-to-life issues in Washington and around the country.
- the **National Right to Life website**, www.nrlc.org, which provides visitors the latest, most up-to-date information affecting the pro-life movement, as well as the most extensive online library of resource materials on the life issues.
- a robust presence on every major **social media platform** (including Facebook, Twitter, Instagram, LinkedIn, and Pinterest), that allows National Right to Life to engage and educate millions of pro-life activists about the life issues.

This report may be downloaded from the National Right to Life website at: www.nrlc.org/uploads/communications/stateofabortion2022.pdf.



Her heart is beating.

For now.

An unborn baby's heart is beating until she dies from abortion.

Her brain waves could be recorded as early as six weeks.

She, along with over 800,000 potential playmates, will die from abortion this year. And powerful political forces believe there should be more abortions, even late in pregnancy, and paid for with your tax dollars.

Since 1968, National Right to Life and its state affiliates and thousands of chapters have been working to save unborn children.

If you believe a life with the potential to laugh, to love, and to do great things is worth saving, please join with us.

Babies need you...

Learn more about our efforts and join us.

facts.nrlc.org



**national
RIGHT TO LIFE**

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