State Pro-Life and Pro-Abortion Laws and Initiatives

As of 2/1/2023

The United States Supreme Court’s June 2022 decision in Dobbs v. Jackson Women’s Health Organization overturned the 1973 Roe v. Wade decision and returned the abortion issue to Congress and state legislatures. As a result, the unborn are already receiving protections in some states due to various pro-life laws.

Prior to the Dobbs decision, states had various responses to protecting unborn children. Before Roe, some states had pre-Roe laws that protected the unborn by making abortion illegal; after Roe was decided, some states enacted trigger laws which would protect the unborn once Roe was reversed. State legislatures across the country had also enacted laws protecting unborn children at various stages from fertilization, or from other developmental markers such as the presence of a heartbeat, or the unborn baby’s ability to feel pain.

Some states adopted a neutral position on abortion, clarifying that there is no right to abortion or the funding of abortion in their state constitution. Other states, in opposition to life, have found a right to abortion in their state statute or their state constitution; this has been accomplished either through an unfavorable court decision, the state legislature passing a law, or a ballot initiative which places a question on the ballot that found a right to abortion in that state’s constitution. Some states don’t fall into any of the categories; they may potentially favor future legislation to protect the unborn.

Pre-Roe Laws (PRL) and “Trigger” Laws

Currently, 19 states have protections for unborn children through either existing pre-Roe laws (“PRL laws” or laws that were on the books prior to Roe), “trigger” laws (laws designed to take effect following Roe’s reversal), or both. These states include Alabama, Arizona, Arkansas, Georgia, Idaho, Kentucky, Louisiana, Michigan, Mississippi, Missouri, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Utah, West Virginia, Wisconsin, and Wyoming.

Arizona, Michigan, and West Virginia’s pre-Roe abortion laws have been challenged in court. A preliminary injunction was issued against Arizona’s and West Virginia’s law, and Michigan’s law is permanently enjoined; these laws are currently not in effect. (Subsequently Michigan passed a constitutional amendment guaranteeing a right to abortion and West Virginia passed a law protecting unborn babies throughout gestation. See page 4.) North Dakota, Utah, and Wyoming’s trigger laws have been enjoined in litigation. "The Arizona Appeals Court has reinstated the injunction against the pre-Roe law, pending appeal."
Gestational Time Limit Laws
Since the *Dobbs* decision, the unborn are also protected by different kinds of “gestational time limit” laws. Some states have laws that protect the unborn throughout gestation, others when there is a presence of a heartbeat (around six [6] weeks gestation), and some when a preborn child is capable of feeling pain at 15 weeks or later. Some pro-life laws like “Heartbeat Protection” laws in states like Georgia and Ohio have provided immediate protection for unborn children and their mothers. For more information on time based protections, please visit this [link](link).

A written summary of state laws protecting the unborn immediately post-*Dobbs*
- Alabama protects the preborn throughout gestation under the Alabama Human Life Protection Act.
- Arizona protects the preborn child capable of feeling pain at 15 weeks gestation.\(^1\)
- Arkansas protects the preborn throughout gestation under their trigger law.
- Florida protects the preborn child capable of feeling pain at 15 weeks gestation.\(^2\)
- Georgia protects the preborn at 6 weeks\(^3\) under their heartbeat protection law.
- Idaho\(^4\) protects the preborn throughout gestation under their trigger law and additionally protects the preborn at 6 weeks under their heartbeat protection law and their heartbeat trigger law, which was challenged but upheld by their state supreme court.
- Kentucky protects the preborn throughout gestation under their trigger law, and at 6 weeks gestation under their heartbeat law.\(^5\)
- Louisiana protects the preborn throughout gestation under their trigger law.
- Mississippi protects the preborn throughout gestation under their trigger law.
- Missouri protects the preborn throughout gestation under their trigger law.
- North Carolina protects the preborn child at 20 weeks gestation.
- Oklahoma protects the preborn throughout gestation under their trigger law.
- South Dakota protects the preborn throughout gestation under their trigger law.
- Tennessee protects the preborn throughout gestation under their trigger law.
- Texas protects the preborn throughout gestation under their trigger law.\(^6\)
- Utah protects the preborn child at 18 weeks gestation.
- West Virginia protects the unborn throughout gestation under their recently enacted Unborn Child Protection Act.
- Wisconsin’s pre-*Roe* abortion law has been challenged by the Governor and the Attorney General. While these laws are in litigation, the state’s abortion facilities have

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\(^1\) In October 2022, a three-judge panel of the Arizona Court of Appeals blocked enforcement of Arizona’s pre-*Roe* abortion law (an injunction on the law had been lifted by the Pima County Superior Court in September 2022). Arizona also has a personhood law that is currently in litigation and not in effect.

\(^2\) The ACLU continues to challenge the Florida 15-week protection law in court.

\(^3\) Georgia’s heartbeat law has been challenged; the law remains in effect during litigation.

\(^4\) Idaho enacted a trigger law that protects unborn children throughout gestation; it became effective on August 25, 2022. Idaho also enacted a heartbeat law and a heartbeat trigger law; these laws were challenged and upheld by the Idaho Supreme Court in *Planned Parenthood Great Nw. v. State* (January 2023).

\(^5\) Kentucky’s heartbeat law has been challenged; the law remains in effect during litigation.

\(^6\) Texas also has a pre-*Roe* law that is also in effect; they also have a heartbeat protection law that allows civil enforcement, also in effect.
decided to stop performing abortions for fear of prosecution; preborn babies are protected.

Other pro-life state initiatives

Currently 4 states have passed a ballot initiative to their state constitutions returning their constitution to a neutral position by clarifying that there is no right to abortion or the funding of abortion. Idaho’s Supreme Court found that there was no right to abortion in a January 2023 ruling.

Table Summary of Abortion-related Laws/Initiatives

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<td>Missouri</td>
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<td>Florida – court decision</td>
<td>North Carolina – protects babies at 20 weeks.</td>
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7 States that have repealed their pre-Roe abortion bans are not mentioned in this list.

8 Indiana was the first state to pass a law protecting unborn children after the Dobbs decision; their law was set to take effect September 15, 2022, and has been challenged. A preliminary injunction was issued in Planned Parenthood of the Northwest v. Members of the Medical Licensing Board of Indiana.

9 Previously, the Iowa Supreme Court found a right to abortion in their state’s constitution. On June 17, 2022, the state’s high court reversed its decision and found no right to abortion. The Governor has filed a motion to dissolve the injunction on their heartbeat law.

10 Invalidated in Roe’s companion case, Doe v. Bolton.

11 New Hampshire currently protects preborn children at 24 weeks gestation.
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<td>Rhode Island –</td>
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\(^{12}\) The state Supreme Court has recently enjoined this law from taking effect by finding a right to abortion in the state constitution, pending litigation.

\(^{13}\) Preliminary injunction was issued in Access Independent Health Services, Inc. v. Wrigley.

\(^{14}\) A preliminary injunction has been issued in Preterm Cleveland et al., v. Yost. The law is currently not in effect.

\(^{15}\) Pennsylvania currently protects preborn children at 24 weeks gestation with their Abortion Control Act.

\(^{16}\) Virginia currently allows abortions through all 9 months of pregnancy with limited requirements for two doctor approval for abortions in the third trimester.

\(^{17}\) West Virginia was the 2nd state after the Dobbs decision to enact the Unborn Child Protection Act. This law is in effect.

\(^{18}\) Preliminary injunction issued in Women’s Health Center of West Virginia v. Miller.

\(^{19}\) Temporary injunction issued in Planned Parenthood Association of Utah v. State.

\(^{20}\) Preliminary injunction issued in Johnson v. State of Wyoming. The state Supreme Court declined to answer questions certified by the state court and returned the order to the lower court.
Pro-\textit{Roe} Abortion Law (PRL)\textsuperscript{7} & Trigger Law & Both PRL and Trigger & Pro-Life Amendments & Right to Abortion & Other States \\
 & & & & in statute & \\
 & & & & South Carolina - heartbeat\textsuperscript{21} & \\
 & & & & Vermont—constitutional amendment and in statute & \\
 & & & & Washington -- by legislatively referred state statute & \\

**Pro-abortion state initiatives**

Voters in California, Michigan, and Vermont passed ballot initiatives on the November 2022 state ballot which enshrined a right to abortion with no limits to their respective state constitutions.

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

Since the \textit{Dobbs} ruling, states that have a right to abortion or who are overall unfriendly to unborn children and their mothers have also taken action by expanding access to abortion and issuing executive orders or enacting legislation protecting abortion-on-demand with no limitations or protections. The governors of California, Colorado, Hawaii, Illinois, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, and Washington State have all issued an executive order directing all state agencies to protect abortion access and prohibiting state agencies from cooperating with any investigations from other states. Michigan’s governor not only challenged their pre-\textit{Roe} abortion ban as mentioned above, but also issued a similar executive order like the above-mentioned states.

\textsuperscript{21} The State Supreme Court in early January 2023 that the fetal heartbeat protection law violated the state constitutional right to privacy and enjoined this law in \textit{Planned Parenthood S. Atl. v. State}.