

THE  
**STATE OF  
ABORTION  
IN THE UNITED STATES**

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10<sup>TH</sup> EDITION

JANUARY 2023



## **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 right-to-life affiliates in each of the 50 states and the District of Columbia, 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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# TABLE OF CONTENTS

Introduction by NRLC President Carol Tobias	4
<b>United States Abortion Numbers</b>	5
<b>Federal Policy &amp; Abortion</b>	
Overview	19
Judicial Federalization of Abortion Policy	21
Congressional Action on Federal Subsidies for Abortion	22
Federal Subsidies for Abortion Providers	24
International Abortion Funding	24
Congressional Action on Direct Protection for Unborn Children	25
Federal Conscience Protection Laws	26
Attempts in Congress to Protect "Abortion Rights" in Federal Law	26
<b>The Hyde Amendment</b>	
Recent Attacks and Background	29
<b>State Laws &amp; Abortion</b>	
Overview	35
Right to Abortion by Interpretation of State Constitution	
State Constitutional Amendment or Legislative Statute	37
Laws Protecting Unborn Children Post-Dobbs	38
Pre-Roe Laws That Protect Unborn Children	39
Laws with Delayed Enforcement	40
Abortion Protections in Early Pregnancy and Fetal Heartbeat Protection Laws	41
Protecting Unborn Children from Dismemberment Abortion	42
Pain-Capable Unborn Child Protection Act	43
Gestational Age Protection Laws	44
Born-Alive Infant Protection Laws	45
Anti-Discrimination Protection Laws	46
A Woman's Right to Know: Abortion Pill Reversal	47
Telemedicine Abortion Prohibitions	48
<b>The Equal Rights Amendment</b>	
An In-Depth Special Report	49
<b>Synopsis of U.S. Supreme Court Cases</b>	71
<b>The Presidential Record on Life</b>	
Joseph R. Biden	75
Donald J. Trump	76
Barack Obama	77
George W. Bush	78
Bill Clinton	79
George H.W. Bush	80
Ronald Reagan	81
<b>About National Right to Life</b>	82

## CAROL TOBIAS

National Right to Life President

This tenth edition of *The State of Abortion* comes less than a year after the U.S. Supreme Court issued its decision in *Dobbs v. Jackson Women's Health Organization*, overturning its 1973 decision in *Roe v. Wade* and its 1992 decision in *Planned Parenthood v. Casey*. Justice Alito writing for the majority noted:

We do not pretend to know how our political system or society will respond to today's decision overruling *Roe* and *Casey*. And even if we could foresee what will happen, we would have no authority to let that knowledge influence our decision. We can only do our job, which is to interpret the law, apply longstanding principles of stare decisis, and decide this case accordingly. We therefore hold that the Constitution does not confer a right to abortion. *Roe* and *Casey* must be overruled, and the authority to regulate abortion must be returned to the people and their elected representatives.



In the intervening months since the Court righted the terrible wrong of *Roe*, we have seen the state of abortion in the United States shift dramatically as many states moved to enact laws that would protect unborn children and their mothers from the tragedy of abortion. At the same time, pro-abortion advocates and politicians in other states moved to enshrine the most extreme abortion protections possible.

Within these pages is a snapshot of where we are 50 years after the Supreme Court's original twin decisions in *Roe* and its companion case, *Doe v. Bolton*. One thing is clear: the right-to-life movement was prepared for the day when *Roe* would fall.

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*. This decades-long strategy led directly to the U.S. Supreme Court readdressing the abortion issue in *Dobbs*.

From recent data analyzed in these pages, we know the annual number of abortions is in an overall decline as a direct result of these laws. 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 remain 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 tenth annual *State of Abortion in the United States* is not just a snapshot of where we are in the post-*Dobbs* landscape, 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".

THE STATE OF ABORTION  
IN THE UNITED STATES

# UNITED STATES ABORTION NUMBERS

**EDITOR'S NOTE:** On the following pages, National Right to Life provides analysis of abortion data released in 2020 by the U.S. Centers for Disease Control and Prevention (CDC) and the Guttmacher Institute.

*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 and the CDC through 2020, and estimating figures for subsequent years (2021-2022), National Right to Life estimates that 64,443,118 abortions have been performed in the United States since 1973.

In late November 2022, the U.S. Centers for Disease Control and Prevention (CDC) released its 2020 Abortion Surveillance report, which showed what appeared to be a drop of 2% in the number of abortions performed in the U.S. The CDC recorded 620,327 abortions from state health departments, about 9,500 fewer abortions than it had recorded in 2019.

While the CDC showed abortion rates dropping slightly, from 11.4 abortions per thousand women of reproductive age (15-44) to 11.2, it saw an increase in the abortion ratio, from 195 abortions per thousand live births in 2019 to 198 for 2020.

In a report released the same day, the Guttmacher Institute reported abortions were up for 2020, reaching 930,160 for the country as a whole, with both abortion rates and ratios showing increases.

Guttmacher's abortion rate increased from 14.2 abortions per thousand women of reproductive age (for Guttmacher, counting age at July 1st of each year) in 2019 to 14.4 in 2020. Their abortion ratio, measured somewhat differently from the CDC but employing the same basic concept, showed an increase from 19.8 abortions per hundred pregnancies ending in abortion or live birth (measured in the 12 months past July 1st again) in 2019 to 20.6 in 2020.

[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.



UNITED STATES  
ABORTION NUMBERS

Because the CDC relies on reports of various quality from state health departments and has been missing data from California, the nation's most populous state, and at least two other states since 1988, their numbers have always been significantly lower than those from the Guttmacher Institute, which surveys abortion clinics directly.

This tells us part of the reason why, for more than two decades, the CDC's numbers have been hundreds of thousands less a year than those reported by Guttmacher. But it doesn't necessarily tell us why the CDC showed a decrease in 2020 while the Guttmacher Institute showed numbers going the other way.

We are left with two competing narratives. One source – the CDC – shows a modest downward trend, continuing a decline that has generally been going on for three decades. The other – Guttmacher – shows an increase that appears to have been going on now for at least three years, when that group reported 862,320, its lowest figure in 46 years. Guttmacher's latest total for 2020 — 930,160 — returns to a level not seen since 2013.

The increase in the number of chemical abortions, particularly with the gutting of regulations during COVID allowing telemedical abortion and mail delivery of pills, may have played a role, especially with the pandemic making tracking everything more difficult.

The way that the pandemic and various pro-life laws and clinic regulations have pushed the abortion industry to recalibrate its business model and consolidate clinics may have shifted patient management to a lot of big abortion clinics, an adjustment that may take state health departments a while to track and accommodate.

Even before the U.S. Supreme Court's decision in *Dobbs* (which was still a year and a half away), many abortion businesses were beginning to look at packing up and heading to other states they expected to be more abortion friendly.

The long and short of it is that both of these groups did their data collection at a time when the country and the abortion industry were in enormous flux, which can make counting a bit difficult.

## **Analysis: Chemical Abortions Have Altered America's Abortion Landscape**

Perhaps nothing has altered America's abortion landscape as much as chemical abortions, changing the public's image and women's perceptions of abortion, the way these are performed and delivered, and significantly, their widespread availability. Loosened government regulations on their distribution, coupled with the unexpected revolution in telemedicine or remote medical care brought on by COVID, made these abortions both easier to get and harder to track.

**ESTIMATED ABORTIONS  
IN THE UNITED STATES**  
**64,443,118**  
**SINCE 1973**

# UNITED STATES ABORTION NUMBERS

Exactly how and how much this impacted abortion numbers for 2020 is difficult to say. But both the CDC and the Guttmacher Institute, the research arm of the abortion industry, show enormous growth in the incidence of chemical (or “medication”) abortion since their last reports.

Both Guttmacher and the CDC show the number of chemical abortions climbing, now accounting for more than half of all abortions performed in the United States. The percentages were fairly consistent, with the CDC saying that 53.4% of the abortions it recorded were chemical abortions, while Guttmacher reported 53% of them were.

Guttmacher, though, recorded more than 200,000 more chemical abortions than did the CDC. Guttmacher’s overall numbers were much greater because Guttmacher reported data from all fifty states; the CDC was missing data on abortion method from Illinois, Louisiana, and Tennessee in addition to all data from California, New Hampshire, and Maryland.

No one is assuming that Guttmacher tracked each and every abortion, chemical or otherwise, but because Guttmacher contacted clinics and “providers” directly and has contacts and connections throughout the abortion industry, it is generally recognized that they uncover many more abortions than the CDC. The CDC relies on reports from state health departments, which generally rely on reports from identified clinics on file with the state.

What qualified as an abortion clinic or even a private abortion-performing doctor’s office became somewhat murky with the advent of chemical abortion and even harder to identify once COVID hit and some suppliers began shipping pills directly to women’s homes.

When first approved by the government in September of 2000, chemical abortions with RU-486 (mifepristone) required a minimum of three office visits. On the first visit, women were counseled, given a physical exam, sometimes an ultrasound to make sure they didn’t have an ectopic pregnancy and to verify that they were not past the gestational age where these pills became less effective. They were then given the first set of mifepristone pills in their first visit.

The women returned a couple of days later to receive misoprostol, a prostaglandin to stimulate powerful uterine contractions to force the dead or dying baby out. A third visit at two weeks sought to confirm the completion of the abortion.

The U.S. Food and Drug Administration (FDA) dropped all but the first required visit in 2016. Even before the pandemic hit, abortion advocates were experimenting with and calling for the elimination of all clinic visits, saying that appointments could be handled virtually, and pills could be shipped by mail to women’s homes.

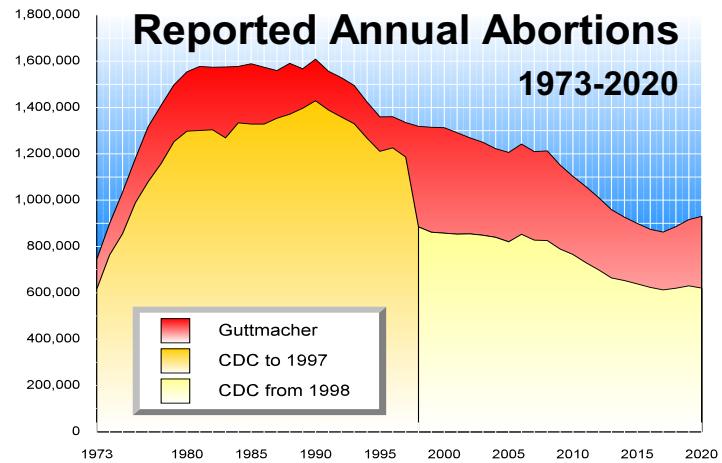
More than a dozen states participated in Gynuity’s “trials” of telemedical abortion between 2016 and 2021 (many other states banned or limited the practice during this same time frame), and international abortion activists like Aid Access began selling these to American women online at least as early as 2018. But these remote abortions did not become legal outside the conditions of a clinical trial until a federal judge temporarily suspended the FDA’s distribution rules in July of 2020.

## Reported Annual Abortions

	Guttmacher	CDC
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	885,800	619,591*
2019	916,640	629,898*
2020	930,160	620,327*
2021	930,160 \$	\$ NRLC projection for calculation
2022	900,414 \$	\$ NRLC projection for calculation

# ABORTION STATISTICS

United States Data and Trends



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 always 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.

While both Guttmacher and the CDC show big drops over the last 30 years, recent years show increases.

- Total abortions dropped 29.8% from 1998 to 2020 with the CDC, and fell 42.2% from 1990 to 2020 with GI.
- The **abortion rate** for 2020 for GI was 14.4 abortions for every 1,000 women of reproductive age (15-44), less than half that of the high of 29.3 in 1981. While up since 2017 (13.5), it is still lower than when abortion was legalized in the U.S. in 1973 (16.3).
- GI says there were 20.6 abortions for every 100 pregnancies ending in live birth or abortion in 2020, up from 18.3 in 2016, the lowest **abortion ratio** since 1972.
- GI says that abortion "providers" rose slightly to 1,603 in 2020 from 1,587 in 2017. The high was 2,918 in 1982.
- According to the GI, more than half (53%) of abortions were done with chemical abortifacients like mifepristone in 2020. It had been just 16.4% as recently as 2008.
- In June 2022, *Dobbs* overturned *Roe*, activating "trigger laws" in some states offering the unborn full protection or otherwise limiting abortion. Many clinics closed, but some women went to other states or ordered abortion pills online.

## The Consequences of *Roe v. Wade*

# 64,443,118

Total abortions since 1973

Based on numbers reported by the Guttmacher Institute 1973-2020, with 3% added for GI estimated possible 3-5% undercount for 1973-2014. Additional 12,000 per year for 2015-2017 for abortions from "providers" GI says it may have missed in 2015-2017 counts. 2022 estimate projects drops from states with trigger laws since *Dobbs*.

# UNITED STATES ABORTION NUMBERS

Ostensibly, this was a response to the pandemic, when medical authorities were urging that non-essential care be postponed or delivered virtually by webcam, but when the Biden administration took over, it made the suspension of the rule permanent.

When established clinics added chemical abortions to their offerings and reported them the way they did surgical ones to the state health department or to Guttmacher, this was somewhat easier to track. Of course, there still exists the possibility that the woman changed her mind and did not take the abortion pills or that they did not work, but at least the clinic could relay to how many women it prescribed the pills.

But with 1) the industry actively promoting the online sale and shipping of foreign abortion pills from remote prescribers in other states or other countries, and 2) the possibility of physicians, nurses, or other generic “certified healthcare providers” who were unfamiliar with state reporting regulations adding chemical abortion to “services” offered by their practices, it is easy to see how many might fall through the cracks and not get reported.

Given the new rules and practices, exactly how many practices added telemedical chemical abortions and how many women ordered these from those clinics or online abortion pill providers is difficult to determine. One might guess that Guttmacher, an abortion industry insider, might have more and better access to this data than the CDC, which relies on reports from state health departments.

Guttmacher did ask and received responses from 625 facilities (they sent out 2,131 surveys) telling how COVID altered their abortion protocols. About a third (34%) of those told Guttmacher that they added a remote pre-abortion visit and 42% said they added a remote post-abortion visit.

Sixteen percent indicated that they added “quick pick up” of mifepristone, and 5% said they began mailing abortifacients when the pandemic hit (about 3% had begun doing this before COVID).

Most of these surveys were returned in 2021, giving Guttmacher the chance to determine how many of these clinics continued to do the remote visits once the pandemic waned. Significantly, 5% said then that they continued to mail abortion drugs. And 4% indicated they now utilize online pharmacies to get abortion pills to their patients, a protocol modification President Biden’s FDA pushed through later that year.

Again, with less than a third responding to Guttmacher’s surveys on this topic, it is difficult to tell how representative this sample might be. These might be responses from only the most enthusiastic chemical abortion advocates. But clearly, the industry has taken the opportunity of the COVID crisis to adapt its methods and the delivery of its services. We can expect more abortions to come from abortion pills ordered online and mailed to women’s homes.

The concern will be not just that these abortions will go unreported, but that failed chemical abortions, complications, and deaths prompted by these deadly drugs will not be recognized or reported as such. This will especially be the case if women or their partners do not reveal their use of these to doctors at the emergency room when they seek treatment for incomplete abortions, infections, ruptured ectopic pregnancies, or uncontrolled bleeding.

Few people know it, but thousands of women have been injured and more than two dozen are known to have died after attempting chemical abortions. One U.S. study (Upadhyay, 2015) put the complication rate for these at 5.2%.

The CDC does not specify deaths by particular abortion method but has continued to report deaths from legal abortion every year since abortion first became legal in 1973 and every year since the “new and improved” chemical abortion method with mifepristone was approved in 2000.

These, of course, are only those deaths officially identified and reported by the states as abortion related. This leaves out those where a woman’s abortion or pregnancy status was not known, recorded, or revealed. Actual numbers are likely much higher, but their reporting at all is an admission that abortion, chemical or surgical, is not as safe as the abortion industry would have women believe.

## **The Creation of Abortion Mega-Centers**

Though recent statistics show the number of chemical or “medication” abortions rising—to the point that they now account for more than half of those performed in the U.S.—those same statistics still indicate that the vast majority of abortions are done through high-volume abortion mega-centers.

And for the first time in years, the number of abortion “providers” has shown an increase.

While the CDC does not track the number of abortionists, the Guttmacher Institute does. Its most recent report showed the number of “providers” increasing, reversing a long-term downward trend.

The correspondence of this reverse and increase with newly rising abortion numbers is likely not coincidental. That Guttmacher saw and tracked these new “providers” may be why their 2020 abortion survey picked up more abortions while the CDC’s showed a decrease.

After dropping to a level not seen since the earliest days of *Roe*, the number of abortion providers Guttmacher identified showed an increase, going from 1,587 in 2017 to 1,603 in 2020, a small but significant increase. Though still far below the high of 2,918 providers seen in 1982, the new vector for both abortions and abortionists is disturbing.

Few of the abortions Guttmacher recorded were done at hospitals (3%) or physician’s private offices (1%), as has been the case for years now. There appears, however, to have been a slight shift from what Guttmacher calls “abortion clinics” (clinics largely devoted to abortion) to those “non-specialized clinics” which offer abortions as one service among others.

Guttmacher doesn’t say so, but the “non-specialized” designation would generally fit the standard Planned Parenthood clinic, where abortion might be the primary money-making product, but other services like contraception are offered.

“Abortion clinics” were responsible for 60% of abortions in 2017 but dropped nearly 20,000 abortions to represent 54% of the 2020 total. Non-specialized clinics added more than 92,000 abortions, increasing from 35% to 43% of abortions.

# UNITED STATES ABORTION NUMBERS

So practically, once the pandemic hit, this meant more abortions were being done by chains like Planned Parenthood. Caseload figures also show an increasing percentage of abortions being performed by high-volume clinics.

Sixty percent of the abortions Guttmacher recorded in 2020 were performed at clinics reporting between a thousand and 4,999 abortions a year. An additional 15% were performed at clinics performing five thousand or more abortions a year.

This means that 693,730 out of the 930,160 abortions recorded by Guttmacher for 2020 — or about three-quarters of the total — occurred at these high-volume clinics.

There were the same number of the giant abortion mega-centers — those performing 5,000 a year or more. However, there was an increase of 20 clinics performing 1,000 to 4,999 abortions a year or more in both 2017 and in 2020.

This means twenty new clinics in America in 2020 performing somewhere between three and thirteen abortions a day.

These latest statistics are an indication that, at least among recorded abortions, the bulk are being done among large “providers,” as has long been the case but maybe even more so today.

If so, most abortions are not being done by small, independent “providers,” but by “Big Abortion” — major established abortionists running large abortion mills in big cities or large national abortion chains such as Planned Parenthood.

Given that more than half of all abortions now involve abortion pills (it was 39% just three years earlier) and that these high-volume clinics accounted for three-quarters of all the country’s abortions in 2020, chemical abortions must have played a major role in the growth of these clinics.

This means that these mega-clinics had to focus a greater proportion of their facilities and staffing on the on-site delivery or remote management of abortion pills and patients.

It is important to note that there were several very important recent modifications in the chemical abortion protocol of the U.S. Food and Drug Administration (FDA). The FDA dropped the number of required visits and allowed telemedicine and home delivery of pills by mail.

These changes reduced the burden on abortion pill prescribers, making it easier for clinics to manage these cases and build this volume.

Unless there are a lot more private practice physicians adding chemical abortions to their practices or women buying abortion pills from overseas and being missed by Guttmacher’s data collectors, this means that abortion performance and advocacy still tend to be concentrated among a few of the nation’s bigger abortion facilities and the abortionists who run them.

And chemical abortion has been key to their expansion and continued profitability.

## **Individual States and Abortion**

National abortion figures attempt to show the direction of the country as a whole, but state numbers sometimes offer a more complete or at least more nuanced view of the trends and currents. And differences between the states, their laws, and the relative dominance of the abortion industry may affect the direction the abortion numbers and how well they are counted. This will be even more the case once states choose how to respond to *Dobbs*.

Remember that the CDC gets its figures from state health departments and that not all of these track their numbers and report back to the CDC. The nation's most populous state, California, has been missing from CDC since 1998, along with at least two other states, which is one reason its numbers are always hundreds of thousands lower than those from Guttmacher, which surveys abortion clinics directly.

Generally, Guttmacher showed states in the Northeast section of the country had the highest abortion rates, led by New Jersey with 29.2 abortions per thousand women aged 15-44 (measured at July 1st), followed by New York, with an abortion rate of 28.8 in 2020. States in the South had the lowest, though three states—Florida, Georgia, and Maryland—all had rates over 18.

Washington, D.C. reported the highest abortion rate, 48.9 abortions for every thousand women of reproductive age.

Both the CDC and Guttmacher also record abortions by state.

Between 2017 and 2020, Guttmacher showed abortions up in 34 states and down in 17 (also counting Washington, D.C.). The CDC show the numbers going up in 29 states and down in 19 states during that same time frame (no data for California, Maryland, or New Hampshire.)

According to Guttmacher, large jumps were seen in California (+16%), Georgia (+15%), Kentucky (+28%), Idaho (+31%), Illinois (+25%), Kansas (+21%), Maine (+16%), Michigan (+18%), Mississippi (+40%), New Mexico (+27%), Oklahoma (+103%) and the District of Columbia (+67%).

Substantial drops were seen in Louisiana (- 26%), Missouri (-96%), South Dakota (-74%) Rhode Island (-21%), West Virginia (-31%), and Wyoming (-29%).

Percentages are instructive but can be deceiving. In more lightly populated states like Maine, Idaho, Rhode Island, South Dakota, West Virginia, or Wyoming, a couple of hundred or even a few dozen abortions can have a huge proportional impact. But in the larger states, a few percentage points can easily mean thousands more or thousands fewer abortions.

Though the vectors in most states matched for Guttmacher and the CDC, there were some differences.

Generally, the variations were slight, perhaps one showing a slight increase, the other a slight decline, but nothing of serious statistical consequence. Other differences, though, were striking, possibly pointing to the reason Guttmacher and the CDC totals pointed in different directions for 2020.

# UNITED STATES ABORTION NUMBERS

For example, Guttmacher showed New York with a 5% overall increase, from 105,380 in 2017 to 110,360 in 2020, adding just under 5,000 abortions. The CDC, on the other hand, showed an enormous decrease for New York for the same years, dropping from 82,966 in 2017 to 63,142 in 2020.

A couple of things are obvious from this. First, the CDC, relying on the New York state health department, typically grossly undercounts that state's abortions, missing more than 20,000 abortions even in 2017. Second, the CDC and the state health department appear to have had an especially poor counting year in 2020, when Guttmacher, who relied on direct surveys of abortionists, found nearly 50,000 more abortions than the CDC.

Whether this is a function of the confusion caused by all the 2020 COVID shutdowns when so many clinics and state offices were closed or operating with reduced staffs (some clinics were only open for abortions), compromised reporting, or the state somehow missed many of the telemedical abortions that many clinics added to their offerings is unknown. But clearly Guttmacher found a lot abortions that the CDC missed.

Guttmacher also found a significant jump in the number of abortions performed in Oklahoma between 2017 and 2020, rising from 4,780 to 9,690 in just three years' time. During that same time frame, the CDC showed a decrease, from 4,681 to 3,797.

A source in Oklahoma tells us that many clinics were late in submitting their 2019 and 2020 reports to the state health department resulting in the CDC being given lower numbers based on incomplete data.

There were a few other states where both data collectors showed an increase, but Guttmacher showed much larger increases than the CDC in Nevada and New Mexico. This, too, may be part of the discrepancy between the two sources.

When they did agree on some of the bigger changes, it confirmed the relationship between supply and demand, i.e., the effectiveness of policies resulting in the closure of abortion clinics.

For example, both sources showed a major drop-off in Missouri, with Guttmacher showing a drop from 4,710 in 2017 to just 170 in 2020 after two of the three clinics in that state closed and the CDC reporting numbers quite similar.

Rhode Island saw its abortions fall 21% after one of the state's two abortion clinics closed. Louisiana saw a big drop (26%) when just one of its abortion clinics closed.

The story in each state is different, but numbers rise or fall when a state passes legislation limiting or funding abortion; when states or private citizens encourage or support alternatives; when big clinics open or close (or shift to another state); or when court cases impact any of these factors somehow affecting either supply or demand.

Sometimes, particularly with the CDC, it may just be that a state health department does a better (or worse) job tracking the numbers from one year to the next, particularly when a new administration moves in and takes over the department.

Economic or social factors (like the pandemic) can also play a role, but these are harder to correlate on an individual state basis. Pregnancy care centers compete with abortion clinics for the lives of moms and their unborn babies but measuring the effectiveness of these outreaches in anything but the broadest measures is difficult.

Teasing out the full set of factors and causes for the increases and decreases seen in each of these states requires more in-depth analysis than is possible in this limited space.

But clearly pro-life legislation, education, and outreach make a difference. And so do counter-efforts by the abortion industry and its lobby building new clinics and promoting new mail-order abortion pills.

As these statistics show, thousands of lives hang in the balance.

## **Demographic Details**

Despite persistent undercounts and missing state abortion data from the CDC, we have seen that the CDC and the Guttmacher Institute, which surveys clinics directly, basically tell the same story: That large percentage drops that characterized much of the last three decades may have begun tapering off or even reversing as the 2010s came to a close.

The overturn of Roe in June of 2022 will likely affect that vector once again. But until the dust settles and we see which states try to protect human life and which states become havens for the abortion industry, it behooves us to see where abortion advocates have been concentrating their energies and which groups the industry has been most successful at reaching.

Guttmacher told us something about where clinics are closing and where new ones are being built and both Guttmacher and the CDC told us which states have seen the largest declines or increases. But the CDC is the only one (so far) that has given us information on abortions by race, ethnicity, gestational age, marital status, etc.

This data can help us see where pro-life efforts have been most effective and with whom we still have a ways to go.

## **Abortion Methods and Timing**

Information from the CDC's 2020 abortion surveillance confirms that there has been a significant shift in the way abortions are performed and their timing.

In 2000, the year in which mifepristone (or RU-486) was first approved for sale in the U.S., just 23.3% of abortions were performed at six weeks gestation or less. The CDC generally measures from the time of a woman's last menstrual period, or LMP.

By 2020, that number had almost doubled: 45.3% of abortions occurred at six weeks gestation or earlier.

The number of abortions at 13 weeks gestation or less – essentially the first trimester – reached 92.5% in 2020, the CDC says, appearing to leave 7.5% performed at 14 weeks or more. The data show 1.1% occurred at 21 weeks or more in that year.

# UNITED STATES ABORTION NUMBERS

For reference, the CDC says that 10.5% of all abortions were performed at 13-20 weeks in 2000, and that 1.4% of abortions that year were done at 21 weeks gestation or later.

Earlier chemical abortions are clearly the major factor here. Chemical, or “medication,” abortion didn’t even merit its own category in 2000, but “other” abortions accounted for just 1.7% of abortions that year.

In 2020, “medical” abortions at 9 weeks gestation or less accounted for 51% of all abortions. Those abortions that took place at greater than 9 weeks constituted an additional 2.4%. (The CDC set its categories for chemical abortions before the U.S. Food and Drug Administration extended the mifepristone protocol from 7 weeks to 10 weeks LMP.)

Surgical and later abortions are still being performed, though the CDC data clearly confirms that more women are now having chemical abortions and are having them earlier.

## **Abortion By Age and Marital Status**

Teenagers continue to account for a smaller and smaller proportion of the abortions performed in the U.S., CDC figures show. In the earliest days of Roe, teens were responsible for about a third of all abortions. By contrast in 2020, females 19 and under represented only 8.5% of the abortions reported to the CDC.

Women in their twenties once again constituted the bulk of abortions, accounting for 57.4% of the CDC’s U.S. total. This is not surprising as it occurs during a woman’s peak years of fertility. But there was some shift over the decade from the younger women (ages 20-24) having abortions to women in their later twenties (25-29) having abortions.

Women 20-24 represented 32.9% of all abortions in 2011, but dropped to 28.1% in 2020. Women 25-29 had 24.9% of abortions in 2011, but that figure jumped to 29.3% of the total by 2020.

The percentage of abortions to women in their thirties increased over this time too, by more than 20%.

Because the number of abortions has fallen significantly over the past thirty years in every age group, these latest shifts are an indication that the drops have been uneven, falling more for some age groups than others.

A closer look at changing abortion rates and ratios for these groups confirms the uneven progress.

The CDC says, overall, that abortion rates — for the CDC, the number of abortions per thousand women of the reference age group — fell for women of all ages between 2011 and 2020. It also shows they dropped less for older women during that time frame.

Abortion ratios — the number of abortions for every thousand live births for the CDC — fell in all age groups but two. Women ages 15-19 saw a 5.5% increase from 2011 to 2020, and women ages 25-29 saw theirs jump by 7.3%. This means women in those age groups who became pregnant were somewhat more likely to choose abortion in 2020 than they were in 2011.

While still lower than rates and ratios from twenty or thirty years ago, the way these numbers are trending is still concerning.

The vast majority of women the CDC recorded as having an abortion in 2020 was not married: 86.3% . That figure has been higher than 80% every year since 1994.

Overall drops in abortion, abortion rates and ratios are an indication that pro-life policies and legislation are working, and that fewer women are seeing abortion as the solution to their problems. The particular and significant drop among teenagers is clearly an indication that parental involvement legislation has been effective.

Recently increased abortions and abortion ratios among young unmarried and college-aged women are evidence that the abortion industry is still having some success targeting this group.

## **Racial and Ethnic Demographics and Characteristics**

The data we have looked at so far tells us that the typical abortion patient is a little bit older, probably unmarried, may be using a chemical abortifacient she received in the mail, and likely aborting earlier in her pregnancy.

Other demographic information from the CDC's 2020 Abortion Surveillance report reveals much about the groups being especially targeted by the abortion industry.

The CDC is missing racial and ethnic data from a lot of states, including large states with large minority populations like California, New York, and Illinois. So, it is difficult to make definitive statements about the national breadth of these trends, but the data it does have gives us a sense about the changing demographics of abortion.

While the CDC tells us that Black women accounted for about 36% of all abortions in 2000, the CDC says their percentage of the U.S. total for 2020 was 39.2%.

Because the overall number of abortions in the United States was 27.7% lower for the CDC in 2020 than 2000, this still makes it possible for the raw number of abortions among Black women to decline, even as their proportion of the national total increased. It simply means that their rates did not fall as much as other racial and ethnic groups.

According to the CDC, the Black abortion rate for 2020 was 24.4 abortions for every thousand women of reproductive age (15-44), representing an improvement from 2000, when the CDC says it was 30 for every thousand black women ages 15-44. Even this latest number, though, was still twice as high as it was for any other racial or ethnic group.

The percentage of abortions to Hispanics also increased over the past twenty years, rising from 17.2 in 2000 to 21.1 in the CDC's latest report. The CDC says their abortion rate in 2020 was 11.4. It was 16 abortions per thousand women (ages 15-44) for this group in 2000.

# UNITED STATES ABORTION NUMBERS

Together, this means Black and Hispanic women accounted for more than six out of every ten abortions performed in the U.S. If one adds in the 7% from the CDC's "other" category (the CDC says this includes Asian, Pacific Islanders, as well as those of other or multiple races), this results in minorities having more than two-thirds of all abortions performed in the United States.

Even with both Black and Hispanic women reporting lower abortion numbers and abortion rates for 2020, this still puts figures for those groups significantly higher than the rates and totals the CDC found for whites. The CDC says whites accounted for 32.7% of abortions and an abortion rate of 6.2 abortions for every thousand women of reproductive age.

That the CDC shows abortions dropping across all racial and ethnic groups is encouraging and shows that some progress has been made by the pro-life movement in America. That abortion and abortion rates have fallen faster among whites than they have among minorities is an indication that additional outreach and education efforts need to continue to be done for minority communities so that more women and their babies will be able to escape the horror of abortion.

## **Previous Births and Abortion**

The CDC continues to show, as it has for a number of years, that most women having abortions have already given birth to at least one child. This does *not* mean that most mothers abort their babies, only that most women who do abort have had at least one previous birth.

Figures for 2020 show that 24.5% of those obtaining abortions already had given birth to one child, 20.3% had two children, 9.7% had borne three children prior to their latest abortion, and 6.4% reported having had at least four previous births.

Together, this means that nearly 61% of those the CDC recorded having abortions in 2020 had, at least once, already gone through a full nine months of pregnancy and given birth to a child. Many of these women have also had prior abortions. The CDC says that 24.1% reported one previous abortion, 10.5% reported two, and 7.8% reported three or more — a total of 42.4%.

This points, along with the earlier data, not to a nationwide epidemic of abortion, but to a particular demographic being targeted and sold abortion over and over, people who feel overwhelmed by the responsibilities of raising and caring for a child, often on their own.

## **A Changing Profile and Mission**

It is easy to get overwhelmed by all the numbers, but it helps to remember that each statistic represents a real person, a mother, and a baby whose life is on the line.

These numbers here represent not just the lives but the stories of many who have, for one reason or another, become casualties of the culture of death. In many ways, their stories are the same. They find themselves facing an unexpected pregnancy, unsure of what to do, and turn to what the abortion industry offers as an easy out.

Of course, it is not easy at all! It costs the life of an innocent child, and it often carries a lifetime of pain and regret for the mother. But the industry's sales campaign is often successful and the deed is done.

# UNITED STATES ABORTION NUMBERS

But as laws are passed, as women learn more about abortion and the development of their unborn children, and as pregnancy care centers make realistic alternatives available, more and more women have resisted the abortion industry's advertising and inducements. And that has, over time, changed the profile of the typical abortion patient.

Though it certainly still happens, this more recent data is a clear indication that the typical abortion patient is not a young white teenager trying to keep her pregnancy secret from her parents. If this new demographic data is correct, she is more likely to be a young, unmarried minority woman in her 20s who already has at least one or more children at home.

The overturning of *Roe* means that some of these women will be in states where abortion is not as accessible as it once was, while others will be in places where abortion is marketed more heavily than ever.

This data won't yet tell us the full impact of that watershed moment or what we'll be able to accomplish legislatively. But it does tell us that women in both situations will need to find the practical and personal support that is available to them. They need to find communities ready to help them bear and raise their children, to encounter people who are ready to show them how to navigate the challenges that life brings.

# 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 five 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.

With the 2022 landmark ruling in the *Dobbs v. Jackson* Supreme Court decision that overruled *Roe v. Wade*, the Court held that “the authority to regulate abortion is returned to the people and their elected representatives.” The role of Congress in regards to abortion can now include a broader scope of possibilities, many of which will be discussed below.

## Federal Law and Abortion

Fifty 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 (H.R. 26).

The Born-Alive Abortion Survivors Protection Act 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.” There have been several votes in past sessions of the U.S. Senate which have garnered majority support, but 60 votes were required and the bill did not advance. The 118th U.S. House passed the measure on January 11, 2023 by a vote of 220 - 210.

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](http://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](http://www.nrlc.org/federal/unbornvictims/statechallenges).)

Pro-abortion advocacy groups have intensified efforts to pass a federal “abortion rights” statutes (e.g., the “Women’s Health Protection Act,” formerly the “Freedom of Choice Act”). They have extracted endorsements of such measures from three presidents (Clinton, Obama, and Biden) and have taken several votes. None of these measures were able to pass both houses of Congress. A further description is available on page 26.

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 29. 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.

# FEDERAL POLICY AND ABORTION

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.

## 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](http://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 Woman’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 *Juno 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*.

The landscape changed dramatically in the summer of 2022. On June 24, in *Dobbs v. Jackson Women’s Health Organization*, the Court overturned the *Roe v. Wade* and *Planned Parenthood v. Casey* decisions. Justice Alito, writing for the majority, stated:

We do not pretend to know how our political system or society will respond to today’s decision overruling *Roe* and *Casey*. And even if we could foresee what will happen, we would have no authority to let that knowledge influence our decision. We can only do our job, which is to interpret the law, apply longstanding principles of stare decisis, and decide this case accordingly. We therefore hold that the Constitution does not confer a right to abortion. *Roe* and *Casey* must be overruled, and the authority to regulate abortion must be returned to the people and their elected representatives.

With the *Dobbs* decision, 50 years of constraints on enacting comprehensive protections for unborn children have been lifted.

## 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.

# FEDERAL POLICY AND ABORTION

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:

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 (SCHIP). 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, a report found. (See “GAO report confirms elective abortion coverage widespread in Obamacare exchange plans,” [www.nrlc.org/communications/releases/2014/release091614](http://www.nrlc.org/communications/releases/2014/release091614))

In the 24 states (plus the District of Columbia) that did not have laws in effect that restrict abortion coverage in 2022, there are an estimated total of 1,553 available plans in those 25 jurisdictions with no restriction on abortion coverage. Of those plans, an estimated 59% (912 plans) cover elective abortion. In 2020 alone, it is estimated that \$13 billion dollars flowed to plans that cover abortion on demand. See [www.obamacareabortion.com/resources](http://www.obamacareabortion.com/resources) for more information.

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. Enactment of this legislation remains a top priority for the National Right to Life Committee.

## **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 PPFA, 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.

# FEDERAL POLICY AND ABORTION

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" (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. Since the time of the initial introduction, there is now compelling evidence that an unborn baby can feel pain by at least 15 weeks.

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). 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.

In addition, there has been an effort to protect unborn children once a heartbeat has been detected (typically around 6 weeks). Various states have passed some version of this legislation, and today, after the *Dobbs* ruling, several are in effect. A federal version has been introduced in the House by Rep. Mike Kelly (R-Penn.) 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 118th 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.

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](http://www.nrlc.org/federal/foca/article020404foca))

# FEDERAL POLICY AND ABORTION

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.

It was not until the 117th Congress that these measures were ever brought for a vote. Four separate votes on virtually identical legislation were taken. In the Democrat-controlled House, the measure passed by a vote of 218-211 (Roll Call No. 295) and again by a vote of 219-210 (Roll Call No. 360). In the Senate, where the measure needed 60 votes to advance, the measure failed by a vote of 46-49 (Roll Call No. 65) and 49-51 (Roll Call No. 170) on two occasions. The so-called “Women’s Health Protection Act” would invalidate nearly all state limitations on abortion, including waiting periods and women’s right-to-know laws. It would require all states to allow abortion even during the final three months of pregnancy based on an abortionist’s claim of “health” benefits, including mental health. It would also invalidate nearly all existing federal laws limiting 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 contained 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.

The Equality Act amended the Civil Rights Act of 1964 by defining “sex” to include “pregnancy, childbirth, or a related medical condition.” It is well established that abortion would 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 would mean, taken together, is that health care establishments and individuals providing healthcare would be required to provide abortion as a “treatment” for pregnancy. H.R. 5’s new definition of “public accommodations” included any “establishment that provides health care.” The bill had 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 the Equality Act. Action may occur in the U.S. Senate.

# 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 detectable<sup>1</sup>. The mouth and lips are present, and fingers are forming<sup>2</sup>.

**Week 7** Eyelids and toes form. The baby now has a distinct nose and is kicking and swimming<sup>3</sup>.

**Week 8** Every organ is in place<sup>4</sup>; bones<sup>5</sup>, fingerprints<sup>2</sup> begin to form.



**Weeks 9 & 10** Teeth begin to form, fingernails develop<sup>5</sup>; baby can turn head<sup>5</sup> and frown<sup>2</sup>.

**Week 11** Baby can grasp object placed in hand<sup>3</sup>.

**Week 17** Baby can have dream (REM) sleep<sup>7</sup>.

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, *Murk v. Abele*, U.S. Supreme Court, 1971. 7. AMA News, 2/1/83. Full citations available upon request.

## MORE THAN NUMBERS

There have been **more than 64 million abortions** in the U.S. since 1973.

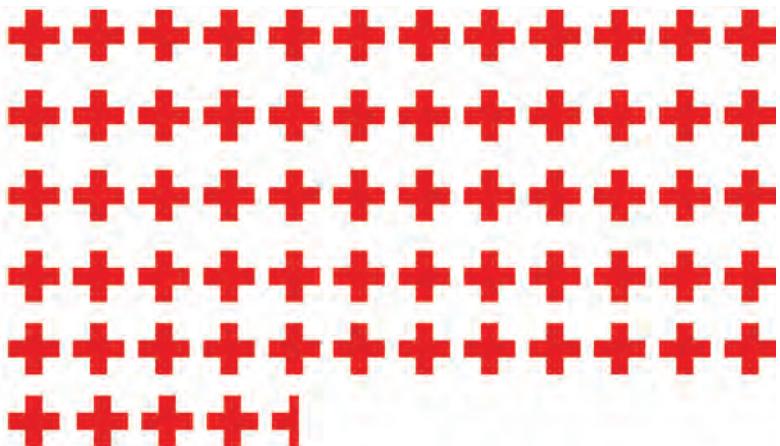
There were over **930,000 abortions** in 2020. That's over **2,400 abortions per day, 123 per hour, 1 every 34 seconds**.

Of all pregnancies that resulted in either live birth or abortion in 2020, **20.6% resulted in abortion**.

## The War On The Unborn

+= 1 Million Lives

Abortions in the U.S. Since 1973:



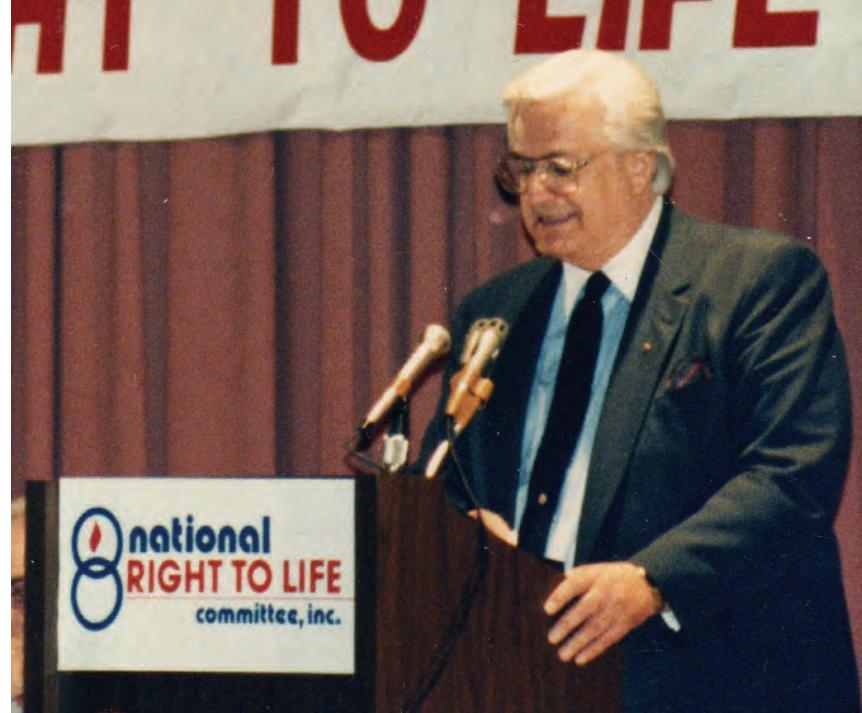
American Casualties from every war since 1775:



1446 Duke Street | Alexandria, Virginia 22314  
202-626-8800 [www.nrlc.org](http://www.nrlc.org)

# THE HYDE AMENDMENT

## Recent Attacks by the Biden Administration and Background



The Hyde Amendment, detailed below, has been renewed each appropriations cycle — with few changes — every year for over 40 years. The Hyde Amendment, and similar provisions, have enjoyed bipartisan support over the years and have been supported by Congresses controlled by both parties as well as presidents from both parties.

The presidency of Joe Biden marked one of the sharpest departures from this long-standing principle, that tax dollars should not fund abortion. The Biden Administration has taken numerous aggressive steps to circumvent the clear Congressional intent in regards to prohibitions of tax-payer funded abortion.

### **Executive Order August 3, 2022**

In early August, 2022, President Biden signed an executive order (EO) “Securing Access to Reproductive and Other Healthcare Services.” The EO “directs the Secretary of Health and Human Services to consider action to advance access to reproductive healthcare services, including through Medicaid for patients who travel out of state for reproductive healthcare services.”<sup>1</sup> This order is intended to pressure the Secretary of the Centers for Medicare and Medicaid to use his authority under Section 1115 demonstrations to waive certain provisions of Hyde Amendment. So far, no state has yet received such a waiver.

### **Veterans Affairs September 9, 2022 Interim Final Rule**

Since 1992, Veterans Affairs (VA) has been statutorily prohibited from using taxpayer dollars for abortion. In fall of 2022, the administration disregarded this longstanding statutory prohibition on taxpayer funding for abortion at the VA and issued a new rule that includes funding abortion for health reasons<sup>2</sup>. The undefined reference to health will mean as in *Doe v. Bolton* (the companion case to *Roe v. Wade*) that abortions can be done for virtually any reason. The Court held in *Doe* that, “medical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman’s age—relevant to the wellbeing of the patient. All these factors may relate to health.”

1. DCPD-202200684 - Executive Order 14079-Securing Access to Reproductive and Other Healthcare Services.

2. October 11, 2022 bicameral public comment letter in opposition to the Department of Veterans Affairs’ (VA) interim final rule (IFR) <https://www.lankford.senate.gov/imo/media/doc/Lankford%20Bicameral%20Comment%20on%20VA%20IFR%2010.11.22.pdf>

## **Department of Defense Memorandum October 20, 2022**

Federal law (10 U.S.C. § 1093) has long prevented the Department of Defense (DOD) from using funds to perform elective abortions and prevented the DOD from using its facilities to provide abortions. In late October, 2022, Biden's DOD published a memorandum directing the DOD to pay the travel and transportation costs for military members and dependents to travel to obtain elective abortions.

The federal prohibition against DOD funding elective abortion clearly extends to funding for any item related to the abortion, such as travel and transportation, which has been the case for the entire life of the funding prohibition.<sup>3</sup>

These actions are each an affront to the longstanding provisions of law prohibiting tax-payer funded abortion. National Right to Life believes that the Hyde Amendment has proven itself to be the greatest domestic abortion-reduction measure ever enacted by Congress, saving over an estimated 2.5 million lives.<sup>4</sup>

## **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,<sup>5</sup> and the number was escalating rapidly.<sup>6</sup> If a woman or girl was Medicaid-eligible and wanted an abortion, then abortion was deemed to be “medically necessary” and federally reimbursable.<sup>7</sup> 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.<sup>8</sup>

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

4. Michael J. New, Ph.D., Hyde @ 40 ANALYZING THE IMPACT OF THE HYDE AMENDMENT (<https://lozierinstitute.org/hyde-40-analyzing-the-impact-of-the-hyde-amendment-with-july-2020-addendum/>)

5. 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 . . .”

6. 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.

7. 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)]

8. 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.”

# THE HYDE AMENDMENT

That is why it was necessary for pro-life Congressman Henry Hyde (R-III.) to offer, beginning in 1976, his limitation amendment to the annual Labor Health and Human Services (LHHS) 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 percent.<sup>9</sup>

## 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.)

The current Hyde Amendment text reads in part<sup>10</sup>:

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

9. "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).

10. [www.nrlc.org/uploads/ahc/ProtectLifeActDouglasJohnsonTestimony.pdf](http://www.nrlc.org/uploads/ahc/ProtectLifeActDouglasJohnsonTestimony.pdf), and [www.nrlc.org/uploads/DvSBA/GenericAffidavitOfDouglasJohnsonNRLC.pdf](http://www.nrlc.org/uploads/DvSBA/GenericAffidavitOfDouglasJohnsonNRLC.pdf).

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)).

# 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.<sup>11</sup>

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.<sup>12</sup>

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 an 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.

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*11. 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.*

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

# Abortion Pill Reversal

To date, over 4,000 babies have been saved by the abortion pill reversal protocol.

## THE ABORTION PILL

Nationwide chemical abortions account for more than half of all abortions.

The most common chemical (medication) abortion method involves a two-step drug process. The first abortifacient drug (mifepristone or RU-486) is given at the clinic and weakens or kills the baby.



The second drug, misoprostol, is taken 24-48 hours later, usually at home, to expel the baby and complete the abortion.

Research indicates that the first drug, mifepristone, alone is **not always effective in ending a life**. A woman may still have a viable pregnancy after taking the first abortifacient drug, mifepristone.

## THE REVERSAL PROCESS

The American Association of Pro-life Obstetricians and Gynecologists, a 2,500 member OB-GYN medical group, supports offering the Abortion Pill Reversal (APR) protocol to women who regret initiating the abortion pill process, after appropriate informed consent.

**The hearts of some women may change during the 24-48 hour period after taking the first drug, mifepristone. And they may profoundly regret taking the first abortion pill. So often, women are unaware of the medical protocol which may provide them an opportunity to reverse their decision and save their child.**

If a woman has taken the first drug, mifepristone, but has not yet taken the second drug, misoprostol, and has questions regarding the health of her child or is questioning her decision to terminate her pregnancy, she should consult a physician immediately for information

about the potential of reversing the effects of the abortion pill, or **call the Abortion Pill Reversal Hotline: 877-558-0333**.

Because of the tested Abortion Pill Reversal protocol developed by Drs. George Delgado and Matt Harrison, abortion minded women now have the choice of potentially reversing the effects of the abortion pill mifepristone by receiving multiple doses of the natural hormone progesterone.

Many women that have undergone the reversal process with the progesterone have been able to deliver healthy babies.

To date over 4,000 babies have been born following use of the Abortion Pill Reversal protocol. Currently, there are over 351 doctors and 41 pregnancy medical centers who are offering the APR protocol.



# STATE LAWS & ABORTION



*"We hold that Roe and Casey must be overruled. The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including the one on which the defenders of Roe and Casey now chiefly rely — the Due Process Clause of the Fourteenth Amendment. That provision has been held to guarantee some rights that are not mentioned in the Constitution, but any such right must be 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty.'"*

-U.S. Supreme Court Associate Justice Samuel Alito  
in *Dobbs v. Jackson Women's Health Organization*

## 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. For a more comprehensive list of laws by NRLC's grassroots network of affiliates, please visit the state legislation page at [www.nrlc.org/statelegislation](http://www.nrlc.org/statelegislation).

These state laws have certainly had an impact not only on the abortion numbers, as discussed earlier in this report, but also on educating and reaching the heart and minds of the American public. 2022 was a particularly strong year for the pro-life movement and a victorious one for unborn children at the state level, a year that experienced the complete overturn and reversal of not one but two damning Supreme Court precedents held in *Roe v. Wade* and *Planned Parenthood v. Casey*.

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.

While the major headlines were centered on the *Dobbs* decision, prior to that, the unborn child and her mother fared well in the 2022 state legislative session. There were very important and positive pro-life trends in the state legislatures in 2022. Legislative trends included bills regarding protecting the unborn child throughout gestation or once there was a presence of her heartbeat, supporting pregnant women and their unborn children, 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.

There were also laws protecting the unborn with disabilities and atypical genetic conditions, treating unborn children with fatal fetal conditions with dignity by offering perinatal hospice. 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. After the *Dobbs* decision, Indiana and West Virginia convened in a special session to successfully pass laws that would protect unborn children throughout gestation.

## **“Extreme” Abortion Laws? “Extremely” Successful in Protecting Life**

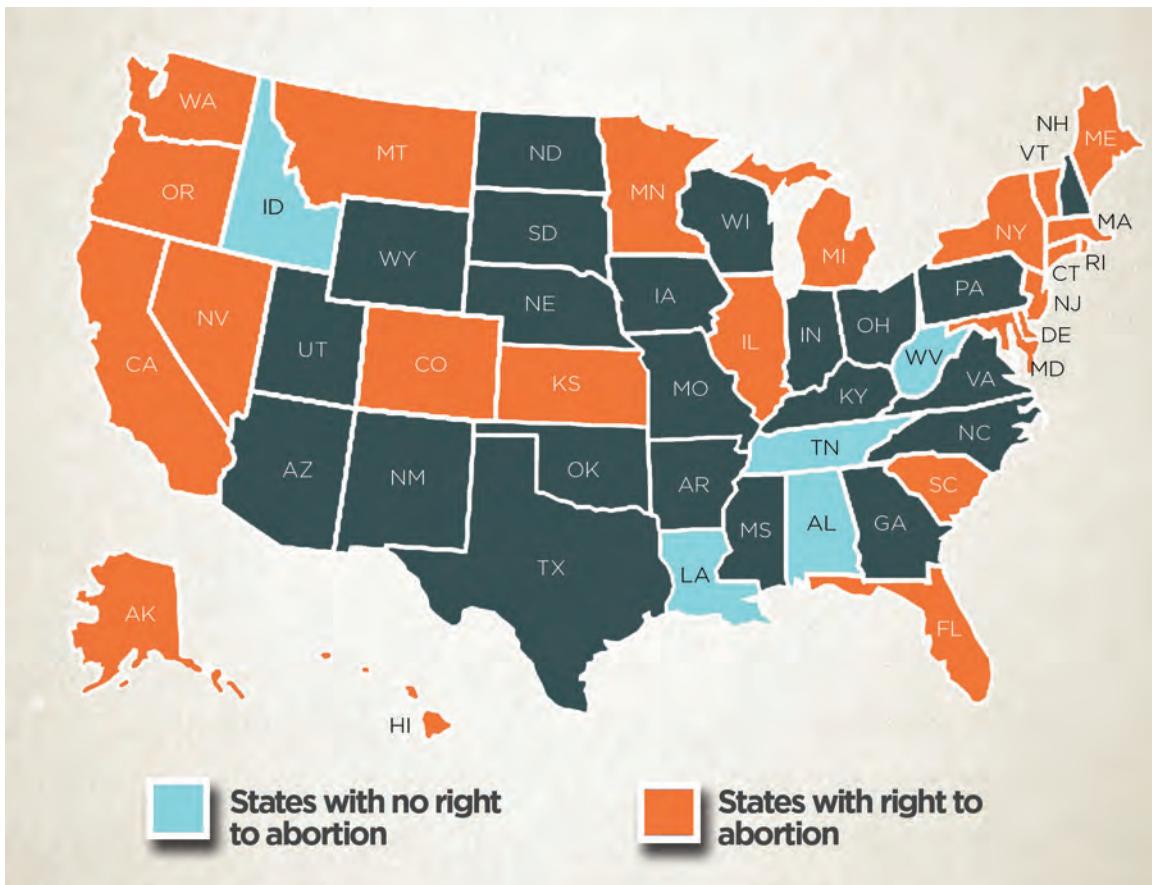
Pro-abortionists believe laws that affirm the life of an unborn child, provide factual medical and scientific information, and whole care for a mother, are “extreme.”

Protecting babies who 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.

# STATE LAWS AND ABORTION

## Right to Abortion by Interpretation of State Constitution, State Constitutional Amendment or State Legislative Statute



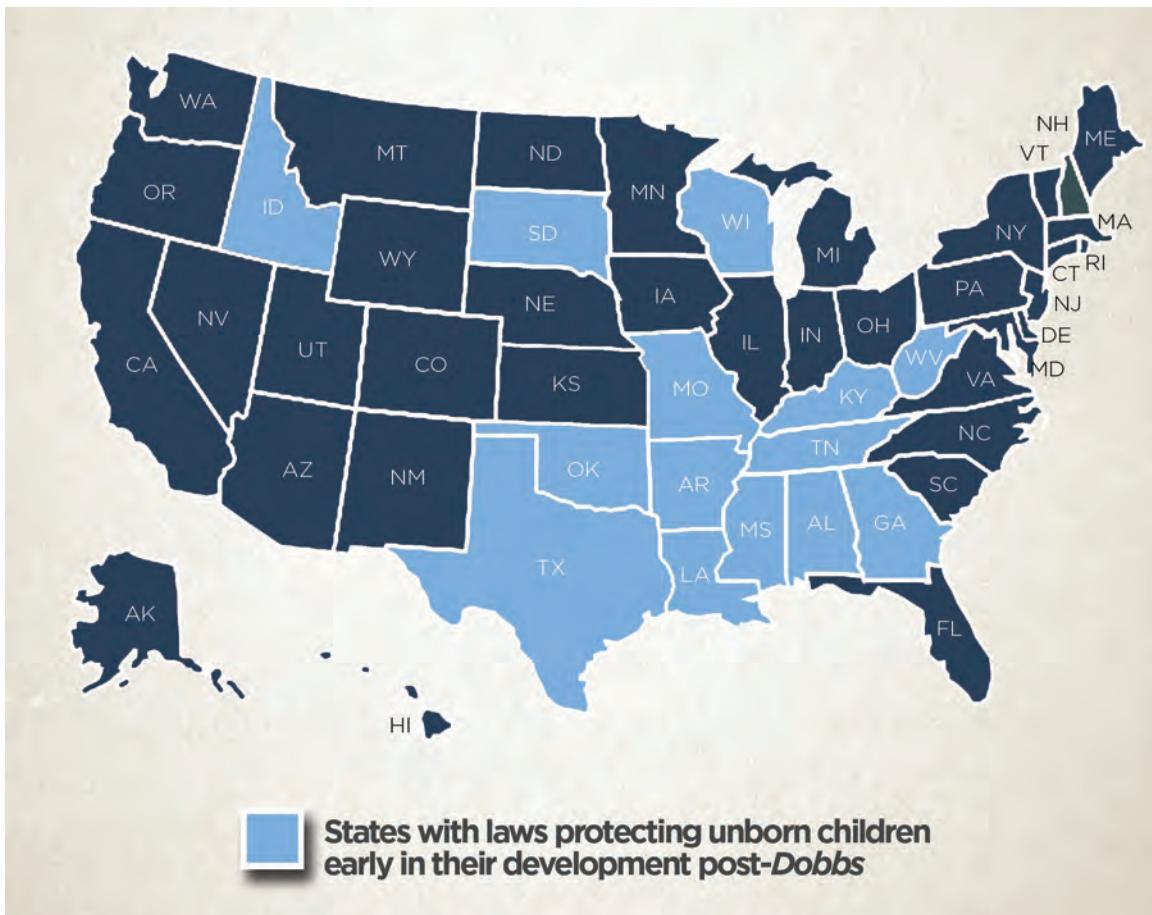
The state constitutions in five states do not provide for a state right to abortion. Four of these specifically excluded abortion and abortion funding through state constitutional amendments (Alabama, Louisiana, Tennessee, and West Virginia.) The constitution in one state (Idaho) was interpreted by a court decision to exclude the right to abortion.

A total of 23 states have guaranteed a right to abortion by either a court decision, constitutional amendment or state legislative statute: Alaska (court decision), California (constitutional amendment and statute), Colorado (statute), Connecticut (statute), Delaware (statute), Florida\* (court decision), Hawaii (statute), Illinois (state statute), Kansas (court decision), Maine (statute), Maryland (statute), Massachusetts (court decision and statute), Michigan (constitutional amendment), Minnesota (court decision), Montana (court decision), New Jersey (court decision and statute), New York (statute), Nevada (legislatively referred state statute), Oregon (statute), Rhode Island (statute), South Carolina (court decision), Vermont (constitutional amendment and statute), and Washington (legislatively referred state statute).

\*In 1989, a case established a right to abortion in Florida. Currently a 2022 Florida law that protects unborn children when they are capable of feeling pain at 15 weeks is in effect while it is being litigated.

# STATE LAWS AND ABORTION

## Laws Protecting Unborn Children Post-Dobbs



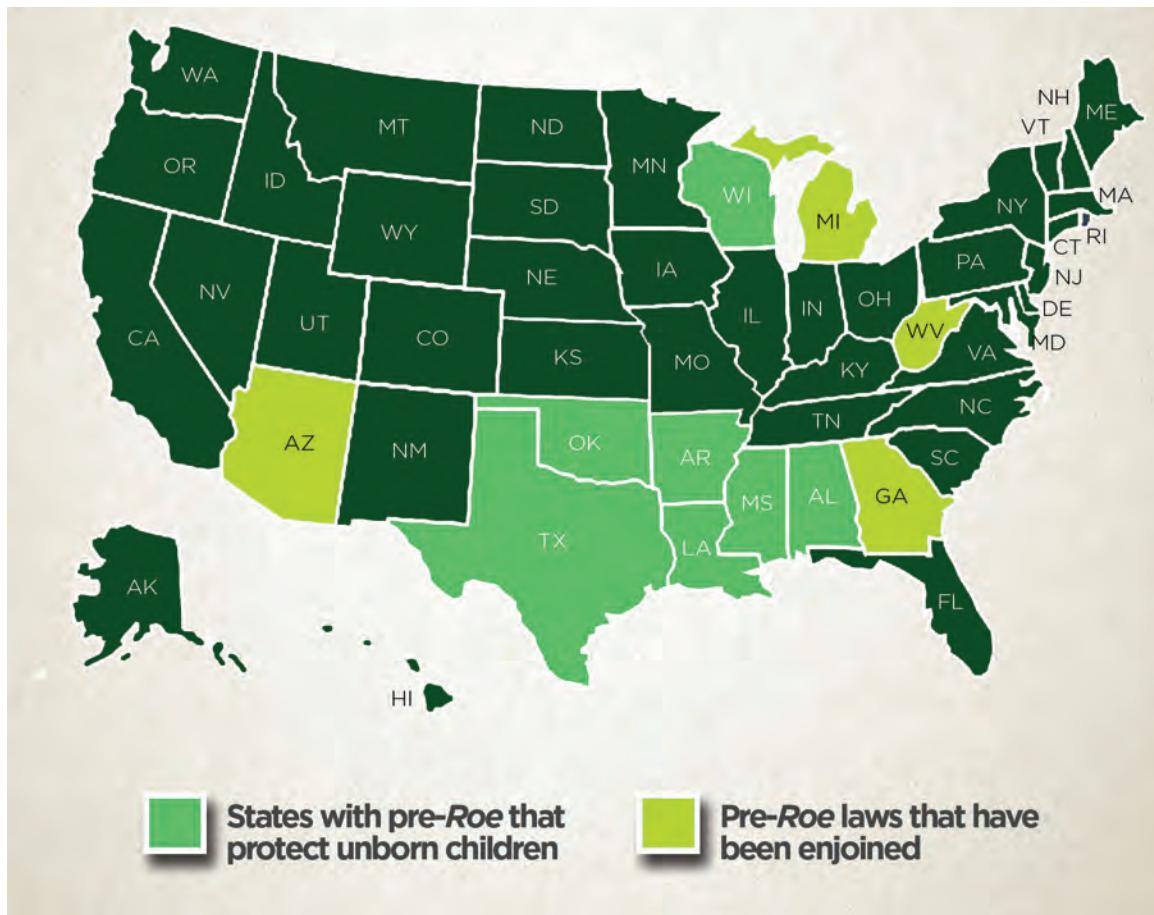
After the *Dobbs v. Jackson* decision that invalidated *Roe v. Wade*, states either enacted laws on the books that protected unborn children but were previously not in effect due to *Roe v. Wade* or passed new laws to protect unborn children at an early stage.

Currently fourteen (14) states protect the unborn child either throughout gestation or once a heartbeat has been detected: Alabama, Arkansas, Georgia, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, South Dakota, Tennessee, Texas, West Virginia, and Wisconsin.

For more detailed information on each law, please visit:  
[www.nrlc.org/wp-content/uploads/PostDobbsfactsheetwherestatesstand.pdf](http://www.nrlc.org/wp-content/uploads/PostDobbsfactsheetwherestatesstand.pdf).

# STATE LAWS AND ABORTION

## Pre-Roe Laws That Protect Unborn Children from Abortion



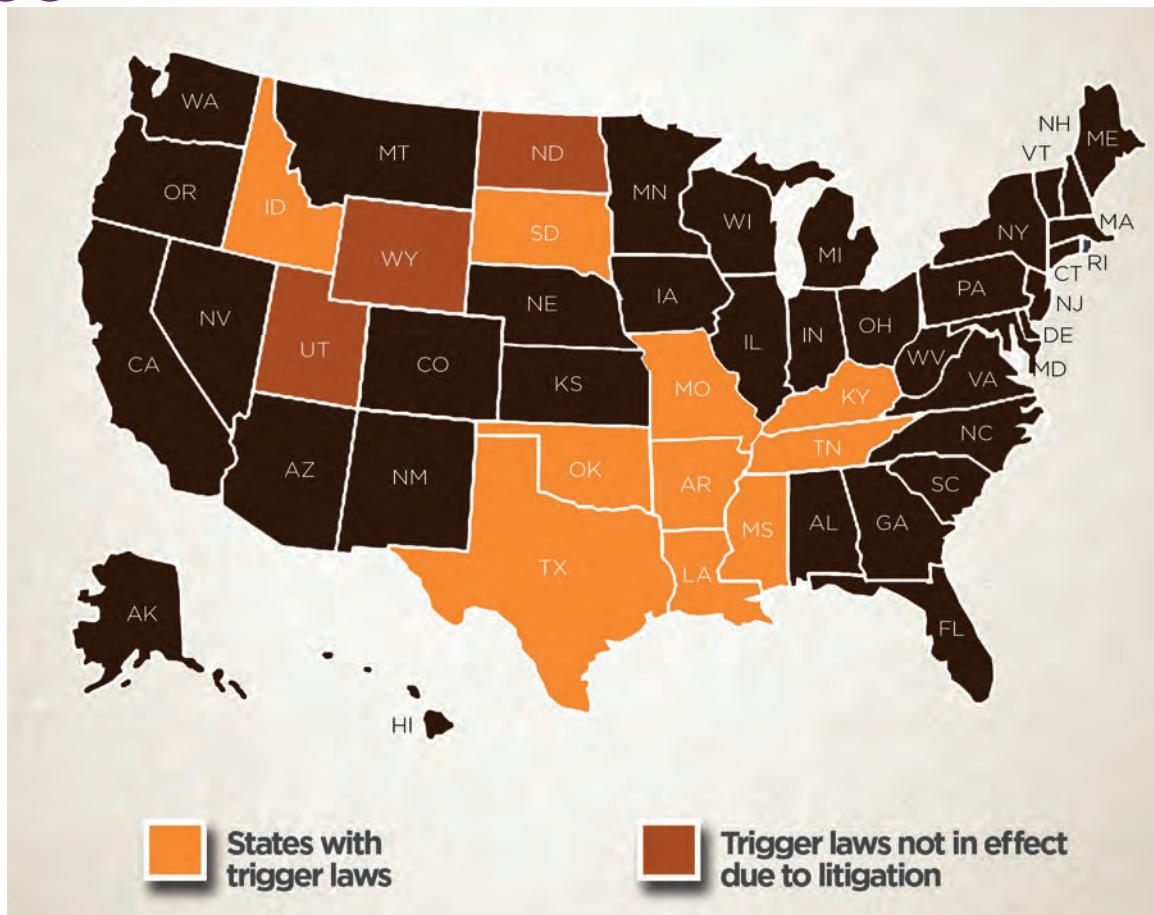
Before *Roe*, some states had laws that protected the unborn by making abortion illegal. These laws remained in statute even though they remained unenforceable under *Roe*. Since the *Dobbs* decision, some states have used these laws to continue to protect unborn children.

11 states have pre-*Roe* Protection Laws: Alabama, Arizona\*, Arkansas, Georgia\*, Louisiana, Michigan\*, Mississippi, Oklahoma, Texas, West Virginia\*, Wisconsin.

\*Enjoined

# STATE LAWS AND ABORTION

## Laws with Delayed Enforcement (Trigger Laws)



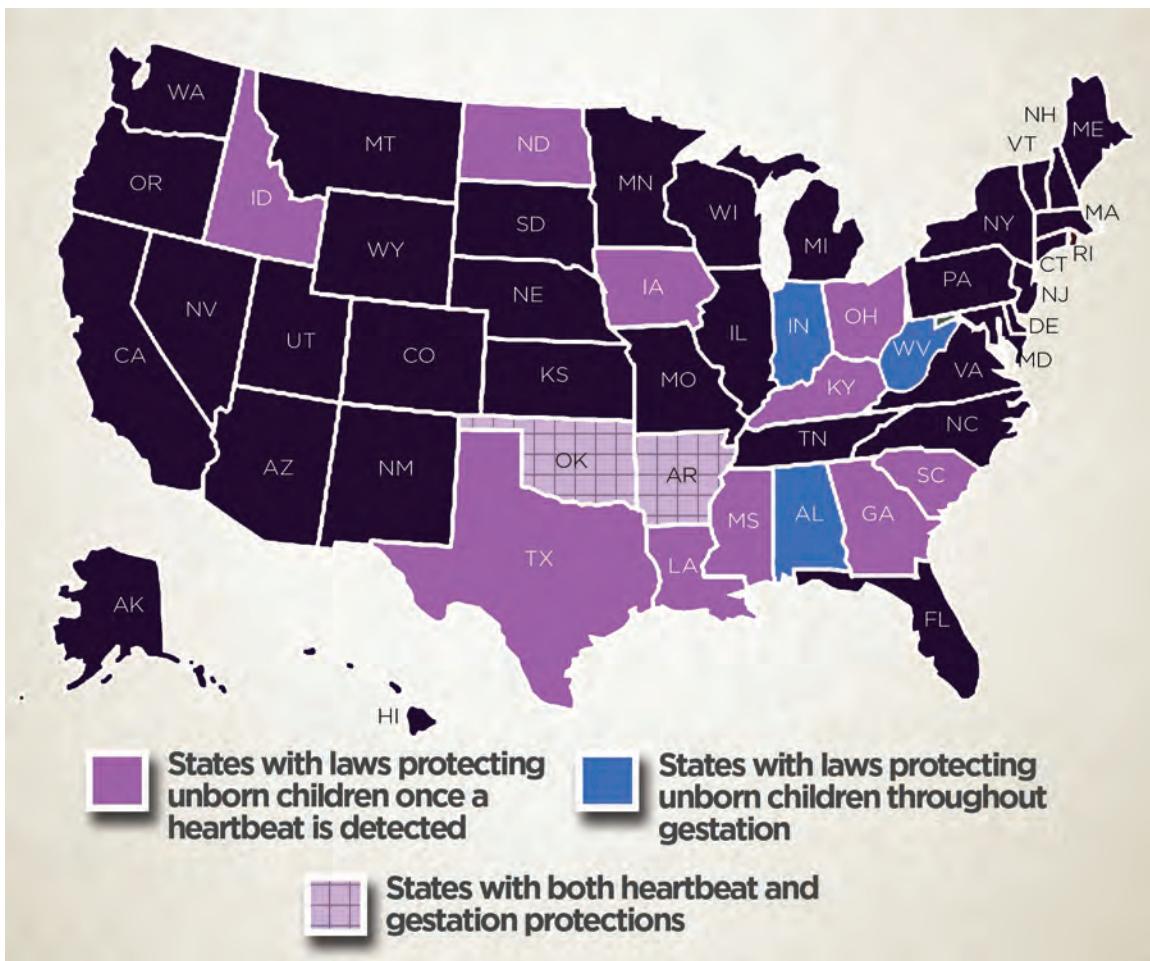
Trigger laws are laws passed in the years following *Roe v. Wade* with delayed enforcement. These laws were specifically aimed at protecting unborn children throughout gestation from abortion unless there is a medical emergency that requires the performance of an abortion. Idaho is the only state with a trigger law that protects the unborn once a heartbeat is detected. These laws were written to be triggered into effect once *Roe v. Wade* was overruled.

Thirteen (13) states enacted trigger laws: Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, North Dakota\*, Oklahoma, South Dakota, Tennessee, Texas, Utah\*, and Wyoming\*.

\* Not in effect due to litigation.

# STATE LAWS AND ABORTION

## Abortion Protections in Early Pregnancy and Fetal Heartbeat Protection Laws



Several states have enacted laws that protect the unborn child throughout gestation or once the heartbeat of the baby can be detected. The heart is the first organ to form in an unborn child. An unborn child's heart begins to beat after eighteen (18) days.

Beginning in 2013, several states have passed laws protecting unborn children from abortion after the unborn child's heartbeat is detected. A total of twelve states (Arkansas\*, Georgia, Idaho, Iowa\*, Kentucky, Louisiana\*, Mississippi\*, North Dakota\*, Ohio\*, Oklahoma, South Carolina\*, and Texas) have passed laws protecting the unborn child once a heartbeat is detected.

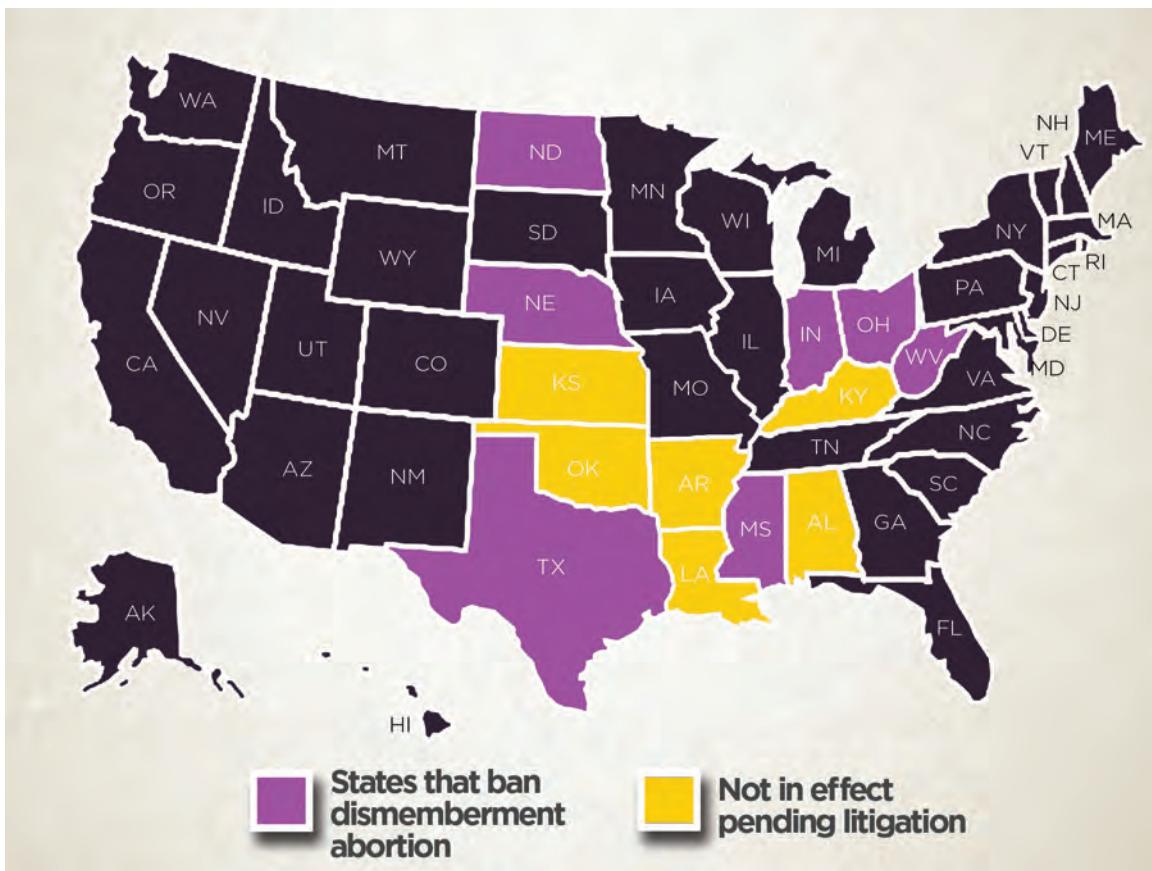
Five states have passed laws protecting unborn children throughout gestation: Alabama, Arkansas\*, Indiana\*, Oklahoma, and West Virginia.

\*These laws are not in effect due to litigation

For more detailed information please visit: [www.nrlc.org/uploads/stateleg/EarlyAbortionandHeartbeatBans.pdf](http://www.nrlc.org/uploads/stateleg/EarlyAbortionandHeartbeatBans.pdf)

# STATE LAWS AND ABORTION

## 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. Eleven more states (Alabama\*, Arkansas\*, Indiana, 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 were 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 were 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.

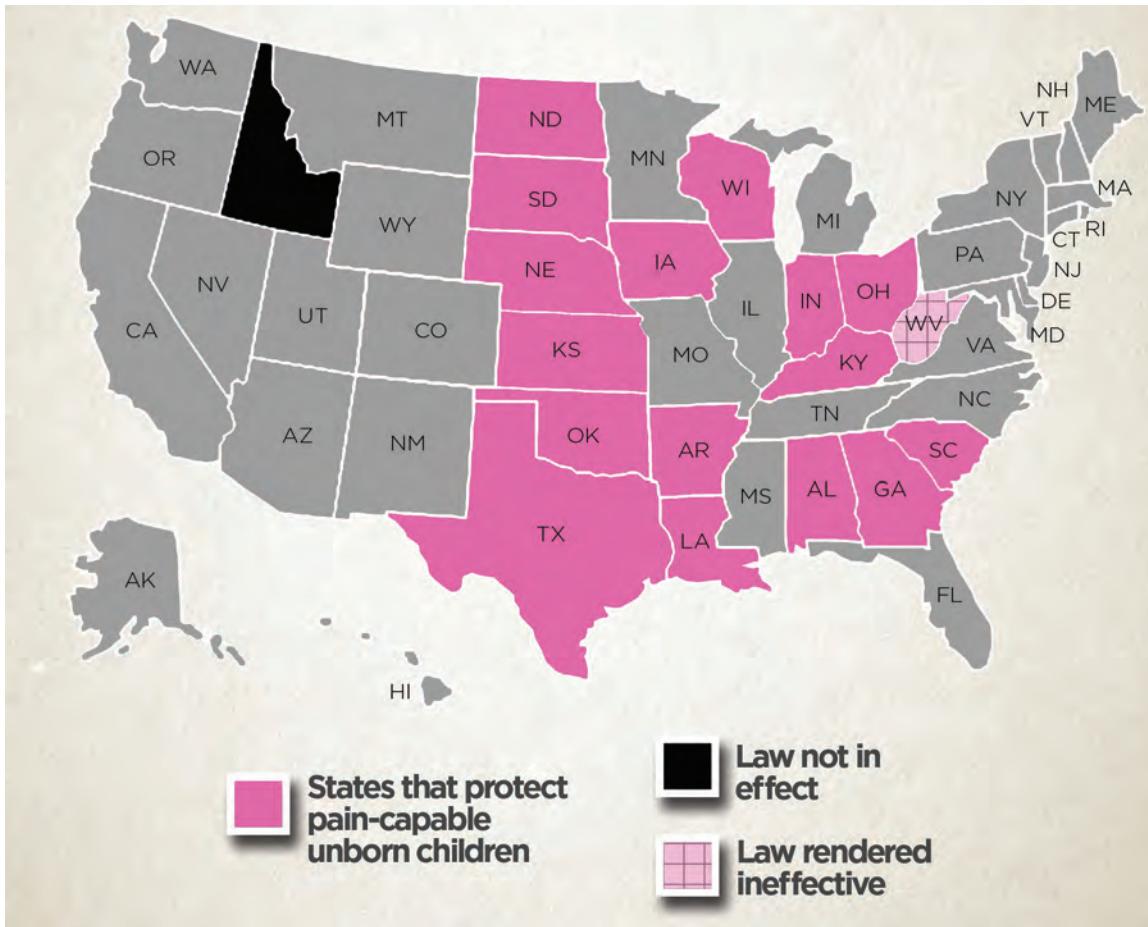
For more detailed information visit: [www.nrlc.org/uploads/stateleg/StateLawsDismembermentAbortionBans.pdf](http://www.nrlc.org/uploads/stateleg/StateLawsDismembermentAbortionBans.pdf).

\*not in effect pending litigation

<sup>^</sup>Law rendered ineffective with passage of the Unborn Child Protection Act W. Va. Code § 16-2R-1 et seq.

# STATE LAWS AND ABORTION

## Pain-Capable Unborn Child Protection Act and Gestational Age Protection Act



The “Pain Capable Unborn Child Protection Act” (PCUCPA) and Gestational Age Protection Act are laws that protect the lives of developing unborn children. Some of these laws protect unborn children who are capable of feeling pain; some protect unborn children at various gestational ages. There has been an explosion in scientific knowledge concerning the unborn child since 1973, when *Roe v. Wade* was decided. These laws protect the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain. Drafted by National Right to Life’s Department of State Legislation, and first enacted by the state of Nebraska in 2010, the “Pain-Capable Unborn Child Protection Act” protects from abortion unborn children who are capable of feeling pain. Twelve years ago, substantial medical evidence demonstrated that unborn children are capable of experiencing pain certainly by 22 weeks gestation. Since 2016, scientific evidence demonstrates that the structures responsible for pain show signs of sufficient maturation by at least 15 weeks of gestation.

### 17 states have passed pain-capable laws protecting babies at 22 weeks gestation; 1 law is not in effect (Idaho).

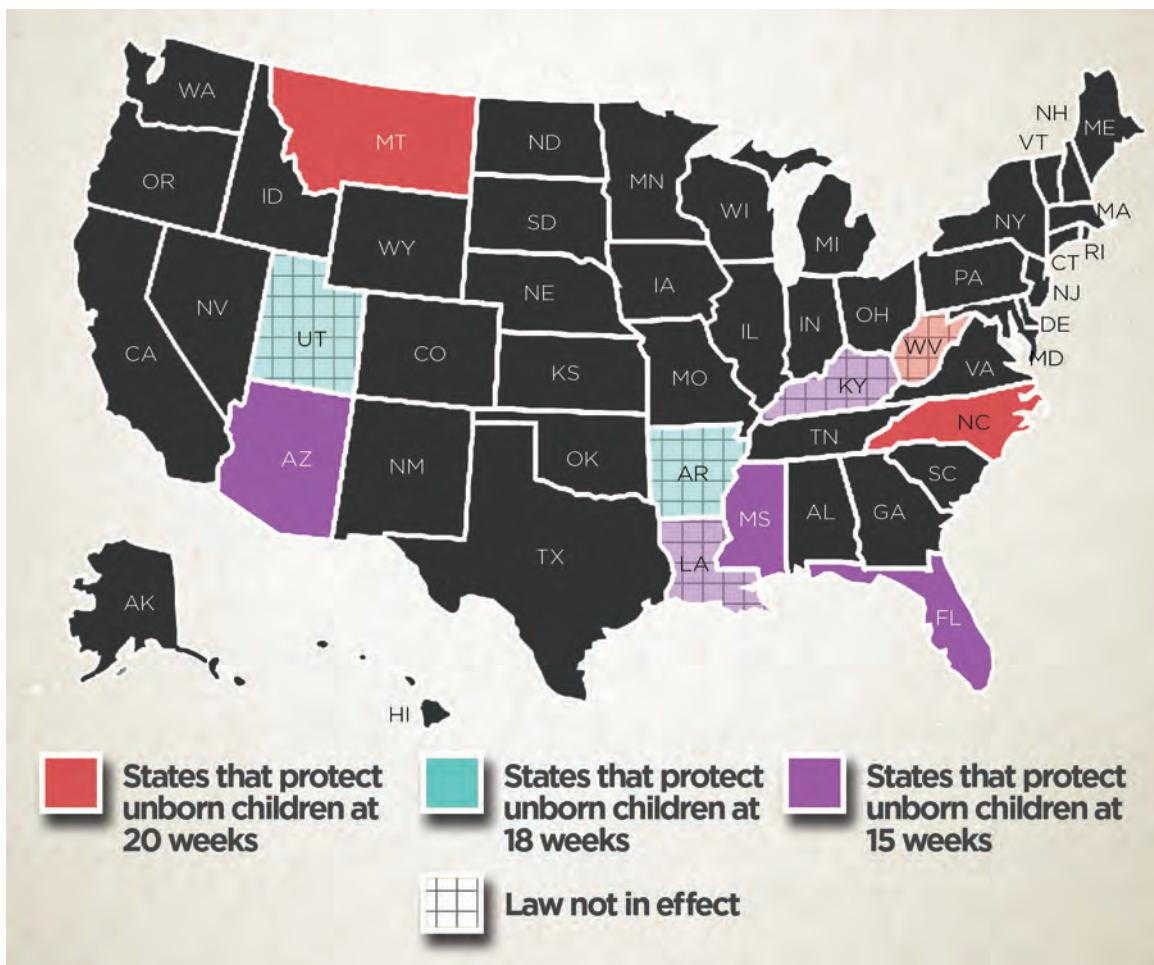
States that protect pain-capable unborn children at 20 weeks post-fertilization age (22 weeks gestation): Alabama, Arkansas, Georgia,\* Idaho,\* Indiana, Iowa, Kansas, Kentucky, Louisiana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, West Virginia^, and Wisconsin.

\*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.

<sup>A</sup> The West Virginia law rendered ineffective with passage of the Unborn Child Protection Act W. Va. Code § 16-2R-1 et seq.

# STATE LAWS AND ABORTION

## Laws that Protect Unborn Children at Certain Gestational Ages



**Four (4) states have passed laws that protect unborn children at 20 weeks gestation.**

Arizona\*, Mississippi, Montana, and North Carolina\* passed laws that protect unborn children at 20 weeks gestation, Only the laws in Mississippi and Montana contained findings related to the pain of the unborn child.

**Seven (7) states have passed laws that protect unborn children at early gestational ages.**

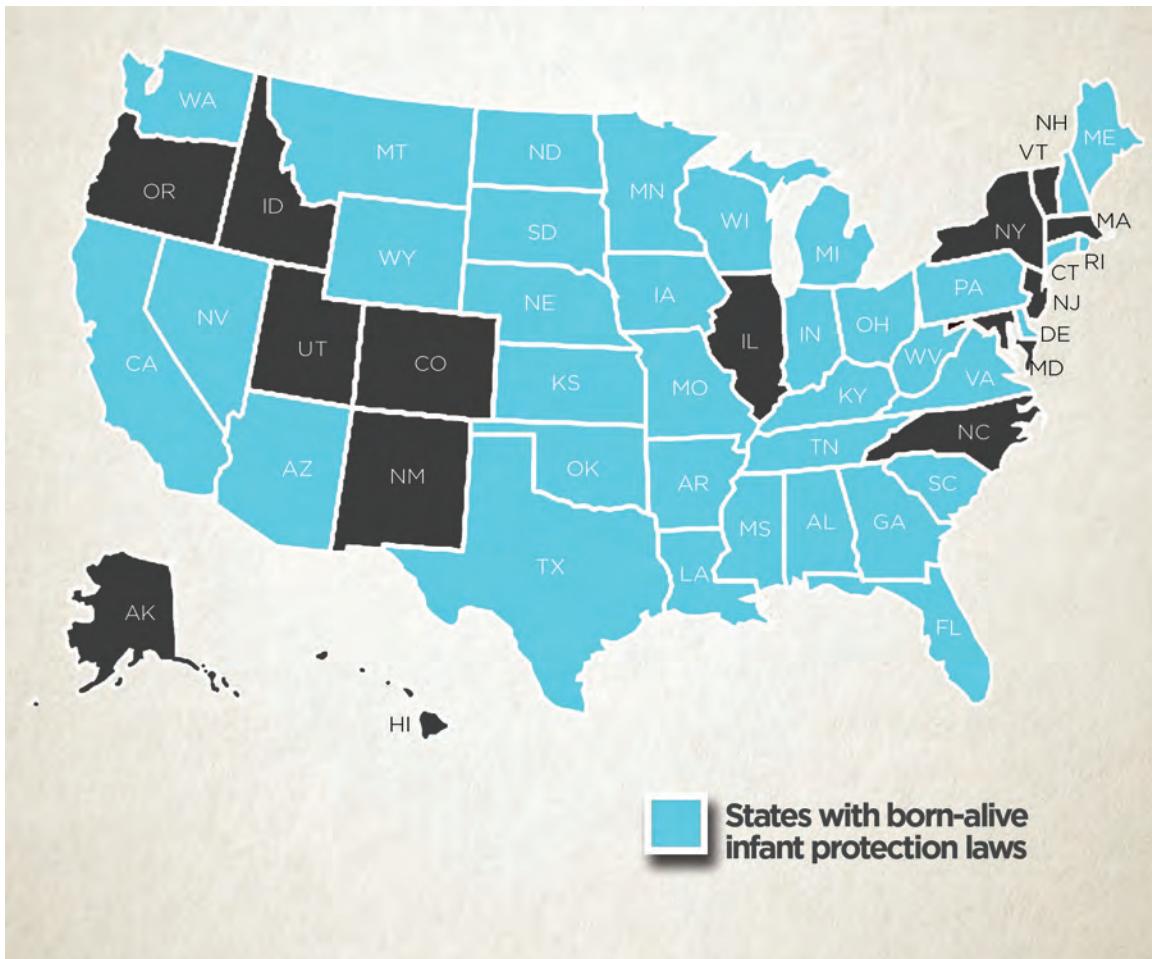
Arkansas\* and Utah\* have passed laws protecting the unborn child at 18 weeks gestation. Arizona, Florida, Kentucky\*, Louisiana\*, and Mississippi have passed laws that protect unborn children at 15 weeks gestation. None of these laws contained findings related to the pain of the unborn child.

Additionally, Missouri and Tennessee have passed laws that protect unborn children at cascading gestational ages. In Missouri, the law would protect unborn children starting at 8, 14, 18, and 20 weeks, except in case of a medical emergency. Tennessee's law has legal protections for unborn children starting at 6, 8, 10, 12, 15, 18, 20, and 24 weeks, except in case of a medical emergency. Neither the Missouri nor the Tennessee laws are in effect.

\*Not in effect

# STATE LAWS AND ABORTION

## Born-Alive Infant Protection Laws

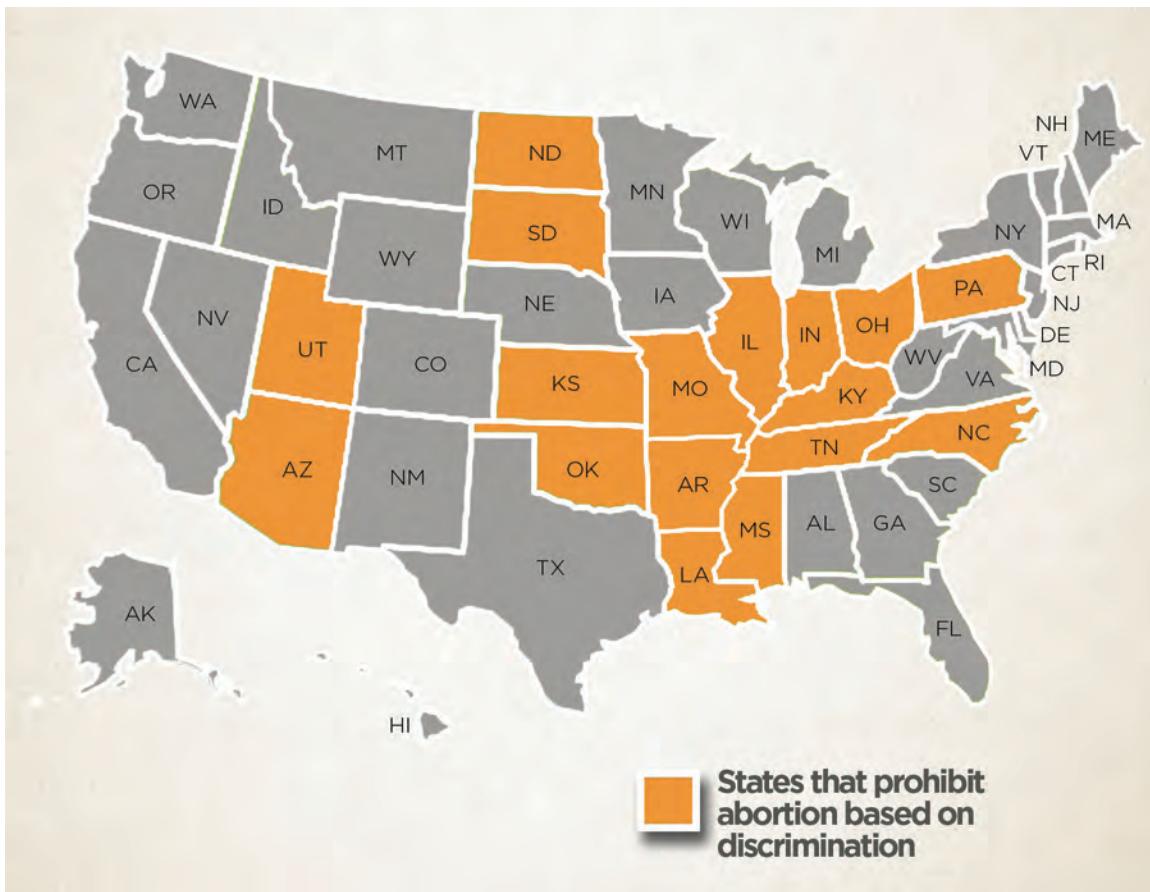


Born-Alive Infant Protection laws vary by state. Some may only define what the term “born alive” means; some require that, when a baby is born alive following an abortion, health care practitioners must exercise the same degree of professional skill and care that would be offered to any other child born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

# STATE LAWS AND ABORTION

## Anti-Discrimination Abortion Bans



These laws protect unborn babies from being aborted on account of their sex, race, and/or genetic condition. 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 condition. 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](http://www.nrlc.org/uploads/stateleg/StateLawAntiDiscriminationAbortionBans.pdf).

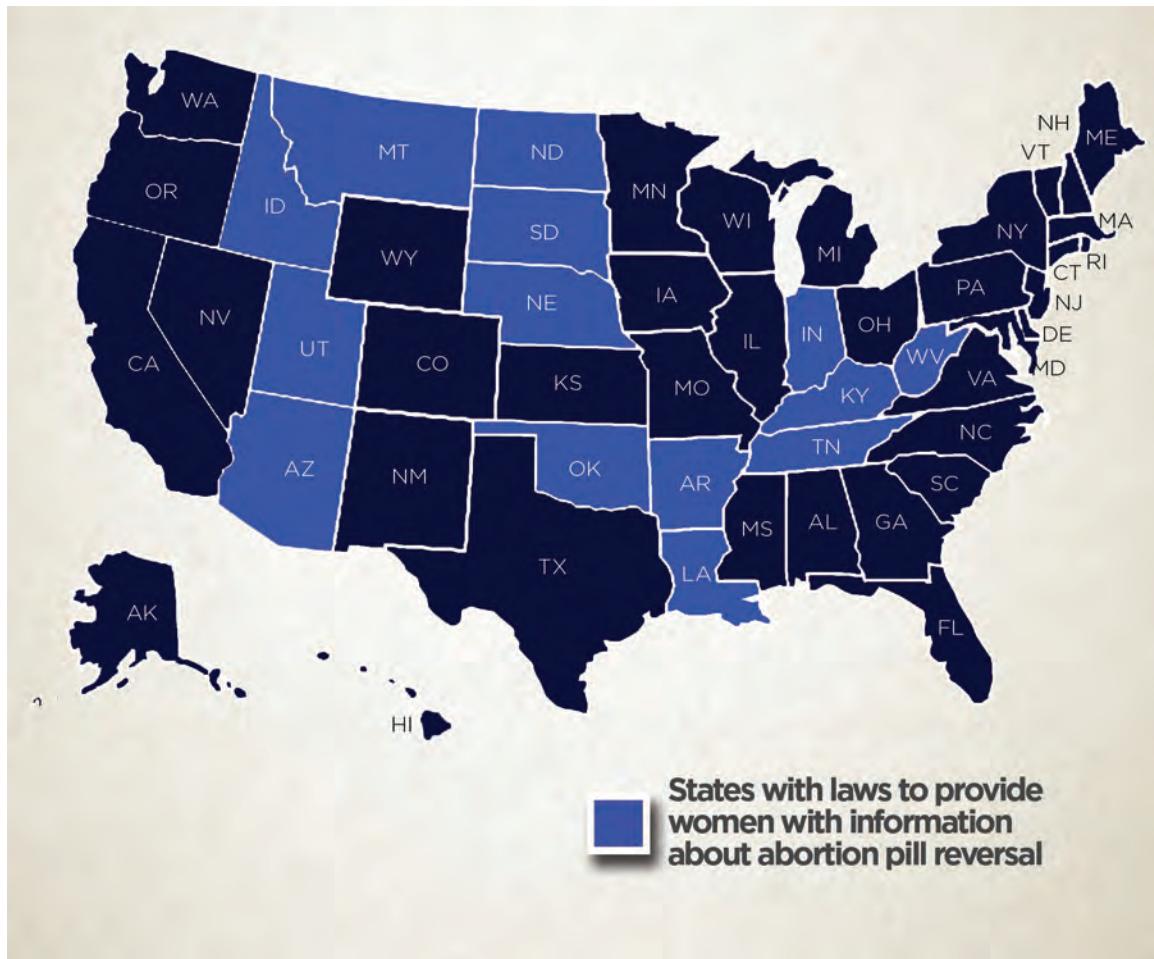
\*“Enjoined only to extent that it subjects physicians to criminal liability for performing certain pre-viability abortions.” Per consent decree, 1993.

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

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

# STATE LAWS AND ABORTION

## 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 4,000 babies.

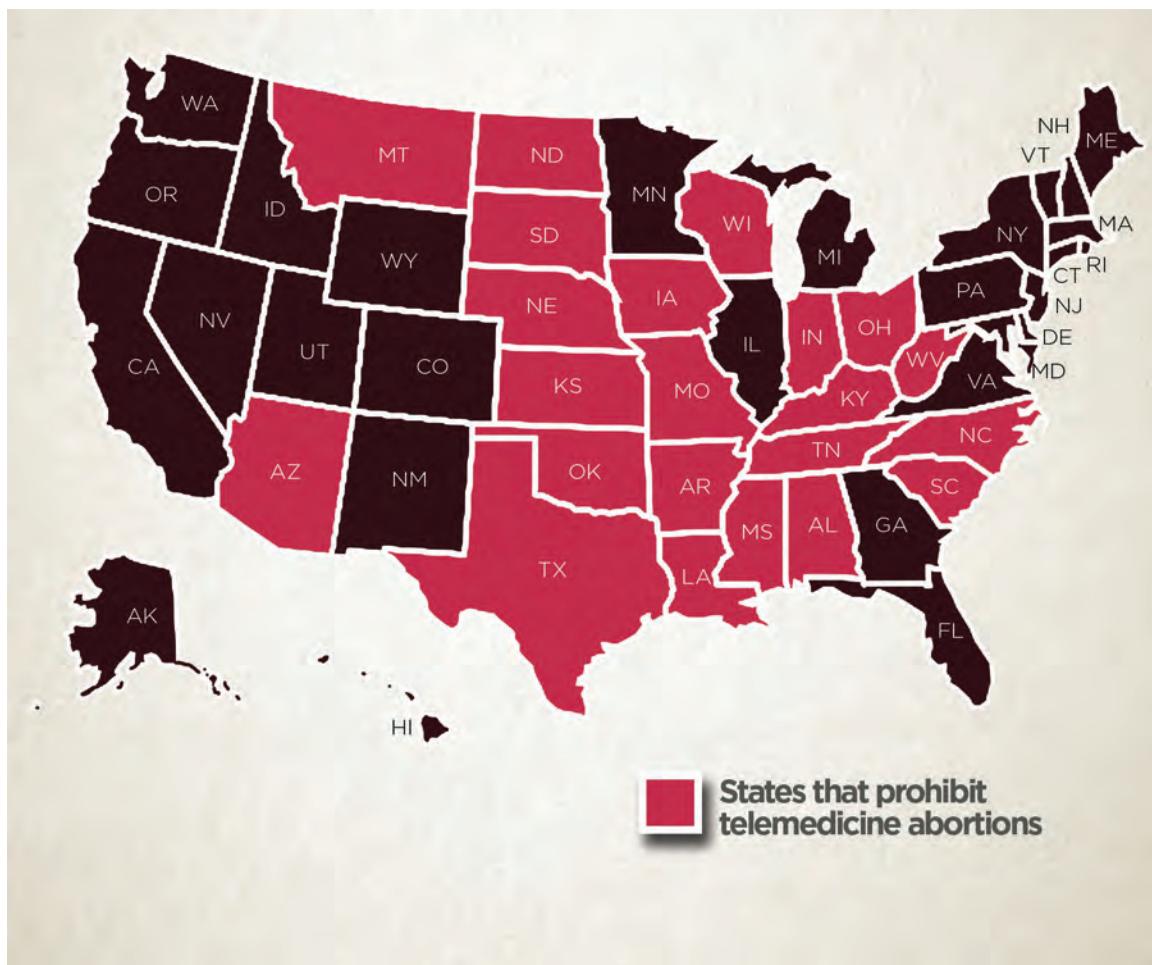
For more detailed information on abortion pill reversal, visit <https://lifearisk.org>.

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](http://www.nrlc.org/uploads/stateleg/AbortionPillReversalFactSheet.pdf).

# STATE LAWS AND ABORTION

## 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.

# THE “EQUAL RIGHTS AMENDMENT”

## An In-Depth Special Report

### Executive Summary

Pro-abortion groups, seeking a replacement for *Roe v. Wade*, are engaged in an intensive effort to flatten constitutional guardrails and ram the long-expired 1972 Equal Rights Amendment into the U.S. Constitution. Many elected Democratic officeholders have enlisted in this extra-constitutional campaign. However, for decades federal judges of every political stripe have rebuffed the politically contrived, legally untenable claims of the ERA revivalists. During 2023, the ERA-revival movement will continue to depend on a misinformation-heavy, “repetition creates reality” strategy, and on a largely sympathetic and often willfully gullible news media, but the movement is likely to also encounter increasing headwinds in the courts and in Congress.

In the wake of the U.S. Supreme Court’s June 24, 2022 ruling in *Dobbs v. Jackson Women’s Health Organization*, overturning *Roe v. Wade*, pro-abortion activists now loudly proclaim as true a position that for decades they denied or deflected: The Equal Rights Amendment (ERA) in the form proposed by Congress in 1972, if it ever became part of the U.S. Constitution, could be employed as a strong legal foundation for challenges to (and in their view, invalidation of) virtually all state and federal limits on abortion, and to require funding of elective abortion at all levels of government.

To those ends, pro-abortion activists are pulling out all stops to try to ram the 1972 ERA into the Constitution. Yet their effort could only succeed if multiple constitutional guardrails were first bulldozed, with far-reaching ramifications for possible future revisions to the text of the Constitution.

The ERA Resolution submitted to the states by Congress on March 22, 1972, contained a seven-year ratification deadline, which expired on March 22, 1979. Nevertheless, after winning adoption of ostensible “ratification” resolutions from the legislatures of Nevada (2017), Illinois (2018), and Virginia (2020), ERA revivalists now assert that the ERA is already part of the Constitution, or will be so upon completion of endorsement by the Archivist of the United States, or the Congress, or both.

ERA revivalists, including President Biden, have urged that Congress adopt a joint resolution purporting to retroactively “remove” the ratification deadline, an action that some claim would “remove any ambiguity” regarding the ERA’s status. There is compelling legal authority to the contrary. In any event, Congress has not adopted any such measure, nor is any such congressional action likely to occur during the years just ahead, if ever..

Far from eliciting media outcries about attacks on the rule of law or the constitutional order, during 2021-2022 the anything-goes ERA-revival campaign was overtly promoted in prestigious organs of the national media such as *The New York Times*, *The Atlantic*, *NBC News*, and National Public Radio.

Nevertheless, so far, the constitutional rule of law has prevailed. The federal courts have remained uniformly unreceptive, over a 41-year period, to the legal claims advanced by the ERA revivalists. As *Washington Post* Fact Checker noted on February 9, 2022:

[E]very time the issue has been litigated in federal court, most recently in 2021, the pro-ERA side has lost, no matter whether the judge was appointed by a Democrat or Republican.... Moreover, two major court rulings have concluded that the ERA's ratification deadline, as set by Congress, has expired — a position embraced by both the Trump and Biden Justice Departments. The Supreme Court in 1982 also indicated support for the idea that the deadline has passed. ("The ERA and the U.S. archivist: Anatomy of a false claim," *Washington Post*, February 9, 2022, also awarding Congresswoman Carolyn Maloney "Four Pinocchios" for her claims that the Archivist of the U.S. could and should unilaterally add the ERA to the U.S. Constitution.)

As this 10th edition of *The State of Abortion* goes to press in mid-January 2023, a landmark ruling on the status of the ERA could come at any time from the U.S. Court of Appeals for the District of Columbia. A three-judge panel heard oral arguments in the case of *Illinois v. Ferriero* on September 28, 2022. The case pits two states that assert that the ERA has been ratified (Illinois and Nevada) against the Biden Administration's Justice Department (which says that the pro-ERA states lack legal standing, but also that the ERA has not been ratified), and against five "anti-ERA" states. The anti-ERA states argue that the ERA expired in 1979, and that even if the deadline were disregarded, the ERA failed ratification due to pre-deadline rescissions by multiple states.

The three-judge panel considering the case is made up of Judges Robert Wilkins (appointed by President Obama), Naomi Rao (Trump), and J. Michelle Childs (Biden). If the appeals court upholds a 2021 ruling by federal District Judge Rudolph Contreras (an Obama appointee), holding that the ERA's ratification deadline was valid and that the ERA has not been ratified, it may become more difficult for even a highly sympathetic news media to continue to unskeptically amplify the misinformation of the ERA revivalists.

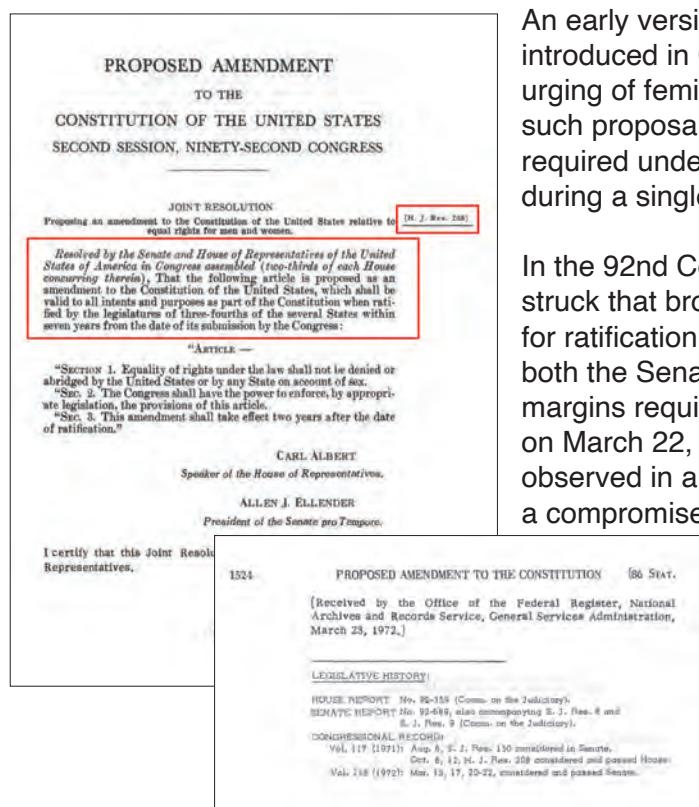
The balance of this Special Report is divided as follows:

- The Rise and True Demise of the 1972 ERA (1972-1982)
- The Origin and Execution of the Unconstitutional "Three-State Strategy" (1993-2020)
- The Fake-It-To-Make-It Misinformation Campaign (2020-date)
- The Campaign Against the Archivists (2019-date)
- Overt Attacks on Article V and on the Role of the Judiciary
- The ERA Revival Campaign Fizzled in the 117th Congress (2021-2022) and Faces Dim Prospects in the 118th Congress (2023-2024)
- How Support for the Equal Rights Amendment in the U.S. House of Representatives Has Plunged Over a 50-Year Period
- Doublethink by Democrats on Rescissions
- The ERA-Abortion Connection: The Mask Comes Off
- Additional Resources
- NRLC Letter to the U.S. Senate (November 16, 2022)

# THE EQUAL RIGHTS AMENDMENT

## The Rise and True Demise of the 1972 ERA (1972-1982)

Article V of the Constitution spells out two possible methods of amending the Constitution. Only one of the methods has ever been employed: Congress, by a two-thirds vote of each house, adopts a joint resolution that proposes a constitutional amendment to the states. The proposed text to be added to the Constitution is always preceded by a “Proposing Clause” specifying the “mode of ratification.” If three-quarters of the states (currently, 38) ratify the amendment, then the amendment becomes part of the Constitution. In 1921, a unanimous Supreme Court held that Congress has the power to include a deadline for ratification.



(The ERA's ratification deadline was placed in the Proposing Clause, as has been the practice for every successful constitutional amendment submitted by Congress to the states since 1960. The Proposing Clause is not a mere “preamble,” but a constitutionally required element of every constitutional amendment submission.)

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.

### Article V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution; or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

An early version of the Equal Rights Amendment was first introduced in Congress a full century ago, in 1923, at the urging of feminist leader Alice Paul. However, until 1972, no such proposal ever received the level of congressional support required under Article V — a two-thirds vote in each house, during a single two-year Congress.

In the 92nd Congress (1971-1972), a compromise was struck that broke the long deadlock: A seven-year deadline for ratification was added. With the change, the ERA cleared both the Senate and the House by more than the two-thirds margins required by Article V, and was submitted to the states on March 22, 1972. As federal district Judge Rudolph Contreras observed in a March 2021 ruling, “Inclusion of a deadline was a compromise that helped Congress successfully propose the ERA where previous attempts to pass a proposal had failed.” The chief sponsor of the ERA in the U.S. House of Representatives, Rep. Martha Griffith (D-Mich.), observed at the time, “I think it is perfectly proper to have the 7-year statute so that it should not be hanging over our heads forever. But I may say I think it will be ratified almost immediately.”

*“I think it is perfectly proper to have the 7-year statute so that it should not be hanging over our heads forever.”*  
—Rep. Martha Griffith (D-Mi.), chief sponsor of the Equal Rights Amendment in the U.S. House of Representatives, 1971



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

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 ever consider the matter subsequently ruled that the “deadline extension” was unconstitutional in two different ways (and that the rescissions were valid) (*Idaho v. Freeman*, 1981). But no additional states ratified during the 39-month pseudo-extension, so as of June 30, 1982, everyone agreed that the 1972 ERA had failed. The U.S. Supreme Court declared that the legal disputes about the deadline extension and the rescissions were moot, because any way you cut it, the 1972 ERA was dead.

At that point, the only constitutionally sound option for ERA supporters was to re-start the process by seeking congressional approval again. Democratic leaders in Congress attempted to do just that. When Congress convened 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.

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, 1972	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).

*The National Archives' official list of state legislative actions on the Equal Rights Amendment as of January 2020.*

# POST-DISPATCH

MONDAY, OCTOBER 4, 1982

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Pages 4B and 5B

W 25\*

## Deal Denied

### 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 application of its earlier approval of the ERA. They declared the issue “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 short of the two-thirds margin required under Article V.

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

## The Origin and Execution of the Unconstitutional "Three-State" Strategy (1993-2020)

Although the real ERA proposed by Congress ceased to exist, in the constitutional sense, on March 22, 1979, the ERA re-emerged as a political construct in 1993, with the development of what came to be called "the three-state strategy."



A determined 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 Rosdorff, 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 shortest, 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 to 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 Bouvard (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."

Under a federal statute enacted in 1984, when a state legislature ratifies a proposed constitutional amendment, it sends notification to the Archivist of the United States. The Archivist is an official nominated by the president and confirmed by the U.S. Senate, with no fixed term. When an Archivist receives 38 valid ratifications, he publishes the amendment in the *Federal Register*, which is a formal notification that the text of the U.S. Constitution has been revised.

In the late 1980s, a rather inconsequential amendment proposal now called the Congressional Pay Amendment (CPA), originally submitted to the states by Congress in 1789, became the subject of a successful campaign to promote its ratification. It crossed the 38-state threshold in early 1992.

The Archivist of the United States, Don W. Wilson, was unsure how to proceed, since many doubted that a 203-year-old proposal was still viable (indeed, in 1921 the U.S. Supreme Court had remarked in passing that it was "quite untenable" to think that the CPA was still pending before the states). Wilson sought and received guidance from the Office of Legal Counsel (OLC) of the Department of Justice. The primary function of the OLC is to provide legal opinions that are binding on agencies of the Executive Branch (unless overturned by later court decisions).

In a memorandum opinion dated May 13, 1992, Assistant Attorney General for the Office of Legal Counsel Timothy Flanigan said that Wilson must certify the CPA. Five days later, Wilson certified the CPA as the 28th Amendment to the Constitution. Subsequently, OLC issued a longer opinion National Right to Life Committee | 53

explaining its full legal reasoning, reaffirming the authority of Congress to set ratification deadlines, but noting that Congress had not done so with respect to the CPA. The memo also noted that no state had attempted to rescind its ratification of the CPA.

(In December 2022, Wilson co-authored an odd opinion piece, published in *Ms.*, in which he claimed he had certified the CPA on his own authority. Not only did Wilson fail to mention the binding guidance he had received from the OLC, but he even went on to criticize his successors for heeding OLC's conclusion that the ERA had not been ratified. This was an exercise in historical fiction on Wilson's part, since the well-documented record shows that Wilson properly deferred to the OLC's legal guidance with respect to the certification of the CPA, just as his successors have done with respect to the ERA.)

The odd history of the CPA really has little relevance to the ERA, since the CPA contained no deadline and involved no rescissions. Nevertheless, in 1993 ERA advocates seized on the certification of the CPA to concoct the "three-state strategy." They asserted deadlines didn't matter and that rescissions should not be allowed, and therefore, the ERA could still become part of the Constitution, if only three more states would adopt "ratification" resolutions.

Operating on this shoddy mishmash of constitutional novelties, 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 opposition from NRLC affiliates and other pro-life forces 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.

In 2019, Archivist David Ferriero (appointed by President Obama in 2009), although personally an ERA supporter, properly recognized that the status of the ERA was quite distinct from that of the 1992 CPA, because the ERA contained a deadline and implicated the rescissions issue. Therefore, Ferriero properly sought authoritative guidance from the Justice Department OLC.

The Sacramento Bee • Sunday, December 12, 1993

Pg. 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.

# THE EQUAL RIGHTS AMENDMENT

On January 6, 2020, Assistant Attorney General for the Office of Legal Counsel Steven A. Engel issued a [38-page legal opinion](#), noting that a unanimous 1921 Supreme Court opinion held that Congress had power to include a binding ratification deadline in a constitutional amendment resolution before submitting it to the states — an element of Congress's power to set the “mode of ratification.” Because the ERA Resolution contained such a deadline, it was no longer before the state legislatures after that deadline, and had not been ratified, the opinion argued.

The OLC opinion also 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; the opinion rejected the legal rationale for the 1978 “deadline extension.” The opinion asserted that a post-deadline Congress could no more alter the *expired* deadline than now act to override a veto by President Carter.

Therefore, the OLC opinion concluded, the only constitutional course for ERA supporters was to re-start the entire process (as Democrats in Congress had tried but failed to achieve in 1983).

Two days after OLC issued the opinion, the National Archives and Records Administration (NARA), the agency headed by the Archivist, posted a statement: “NARA defers to DOJ on this issue and will abide by the OLC opinion, unless otherwise directed by a final court order.” That remains the NARA position to this day.

## The “Fake-It-To-Make-It” Propaganda Campaign (2020-date)

Since January 2020, ERA revivalists have pressed forward on multiple fronts with their “deadline denial” theory that the 1972 ERA has been ratified and is part of the Constitution, requiring at most minor steps to formalize its inclusion.

Many elected officeholders (Democrats, with few exceptions), seeing political advantage, have lent their weight to the misinformation-based narrative. To cite just one example, on November 16, 2021, House Speaker Nancy Pelosi (D-Calif.) said that the ERA was on “the cusp of being enshrined into the Constitution.”

This essentially demagogic approach to the constitutional amendment process was well illustrated in [an exhortation by Kate Kelly](#), an attorney-activist, author, PBS commentator, and former congressional staffer prominent in the ERA revival campaign, in remarks directed to other ERA-revivalists in the legal community, during an event sponsored by the Washington & Lee Law School on October 28, 2022. Kelly said:

I would just say the number one thing is just actively talking about it though it exists. You say, in law school, for example, in a class, ‘What about the 28th Amendment?’... Act as though the Equal Rights Amendment exists. Act as though it is enforceable. Proceed to tell everyone you know that that is the case...

### Too late to ratify ERA, Justice Dept. says in opinion

By PATRICIA SULLIVAN

The U.S. Justice Department says the Equal Rights Amendment can no longer be ratified because the deadline expired decades ago. That decision, in the path of activists who want the amendment enacted if Virginia's new, majority Democratic legislature approves it.

The opinion from the Justice Department's Office of Legal Counsel was dated Monday and made public Wednesday, the first day of Virginia's legislative session.

Opponents contend that Congress had the constitutional authority to impose a deadline on the ratification of the ERA and, because that deadline has expired, the ERA Resolution is no longer pending before the States. Assistant Attorney General Steven A. Engel wrote, “Congress may not revive a proposed amendment after the deadline has expired.”

Thirty-eight states are required to pass the ERA, and they selected it as the 38th amendment, and only 35 had approved it before the 1979 deadline and a subsequent extension to 1982.

Since 2017, legislatures in Nevada and Illinois have ratified the ERA, and Virginia is poised to follow suit.

“The people had seven years to ratify the ERA, and they rejected it,” the Justice Department said in a statement accompanying their lawsuit. “To sneak it into the Constitution through this illegal process would undermine the very basis of our constitutional order.”

But five of the original 35 states have rescinded their ratifications: Idaho, Kentucky, Nebraska, Tennessee and South Dakota.

The 38-page opinion, which defines the position of the executive branch on legal issues, came as a result of an inquiry by

Advocates contend that since the text of the amendment did not include a deadline, it is eligible for ratification indefinitely. Bills have been introduced in the House of Representatives to restore the deadline or to restart the ratification process.

Julie C. Suk, a professor at the City University of New York who is writing a book about the ERA, and her legal team, do not see Virginia or any state legislation from going forward, or prevent Congress from removing or revising the ERA deadline.

“Once you have 38 states ratifying the amendment, it will succeed!” said Jennifer D. Maloney (D-N.Y.), “I do not believe that the CLC has the final word to dictate how Congress or the states proceed in amending the Constitution.”

Virginia Attorney General Mark R. Herring (D) accused the Trump administration of opposing women’s equality and called the lawsuit by the Republican attorneys general “ridiculous.”

“I think what you’re going to see is a continued commitment to see this through,” Herring said. “We are ready to do whatever we need to do.”

Washington Post  
January 9, 2020

Yet even in January 2020, claims that the 1972 ERA remained viable already ran counter to multiple earlier ERA-related actions by the federal courts. Since then, in the judiciary — the branch of government charged “[to say what the law is](#)” — things have only gotten worse for the ERA revival movement.

Douglas Johnson, director of the National Right to Life *ERA Project*, authored [a detailed review of all of the federal court actions pertaining to the ERA](#) that have occurred since the ERA’s March 1979 expiration date. He summarized: “So far, 26 federal judges and justices have been presented with opportunities to act on one or more substantive or jurisdictional issues presented by ERA-revival litigators. The pro-ERA side has yet to get a *single* judge’s vote on any component of their theories, although the judges were *evenly divided* in party affiliation. During 2021 and 2022, the federal judges who ruled against ERA-revival legal claims were appointed by Democratic presidents 7 to 1.”



“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

After Archivist Ferriero declined to certify the ERA as part of the Constitution — properly following the guidance of the January 6, 2020 OLC opinion — he was sued by the attorneys general of Virginia, Nevada, and Illinois (the three “late-ratifying” states). The case was assigned to federal district Judge Rudolph Contreras in the District of Columbia,

an appointee of President Obama. Contreras subsequently allowed the Republican attorneys general of five “anti-ERA” states (Alabama, Louisiana, Nebraska, Tennessee, and South Dakota) to become “intervenor-defendants” in the case; these five states argued in support of the constitutional validity of both the deadline and the rescissions.

On March 5, 2021, Judge Contreras handed a major legal defeat to ERA-cannot-die movement. He [ruled](#) that even if the Archivist had certified the ERA, that action would not have determined the legal status of the ERA; that the ratification deadline was constitutionally valid; and that the “ratifications” by the three states “came too late to count.” He observed, twice, that it would have been “absurd” for the Archivist to disregard the deadline.

The idea that Congress can decide whether or not a proposed constitutional amendment has achieved ratification is known as the “congressional promulgation theory.” Since Congress had not taken any action to endorse the notion that the ERA had been ratified, Judge Contreras did not rule on whether Congress has anything to say about it. Contreras did observe in a footnote, “Commentators have widely panned the theory as out of sync with the text of Article V, prior precedent, and historical practice....Indeed, Plaintiffs and the Archivist both denounce the theory.” Contreras

CNN politics

Federal judge says deadline to ratify ERA ‘expired long ago’ in setback to advocates’ efforts

By Veronica Strazdokas, CNN  
Updated 2:55 PM ET, Sat March 6, 2021



A marcher holds a sign that says “ERA USA” during the Women’s March in the borough of Manhattan in New York on January 19, 2020.

(CNN) — A federal district judge on Friday dealt a blow to advocates of the Equal Rights Amendment in ruling that the deadline to ratify the ERA “expired long ago” and three states’ recent ratifications of the amendment arrived “too late to count.”

# THE EQUAL RIGHTS AMENDMENT

also wrote that “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.”

The pro-ERA states appealed to the U.S. Court of Appeals for the District of Columbia. In February, 2022, a newly elected attorney general in Virginia withdrew that state from the litigation, asserting that Judge Contreras’ ruling was correct. Therefore, the case is currently styled as *Illinois v. Ferriero* (even though Ferriero retired as Archivist at the end of April 2022).

After rounds of written briefings by the plaintiffs, the Justice Department, and the anti-ERA intervenor states, and the submission of innumerable amicus briefs, a three-judge panel of the D.C. Circuit heard oral arguments on September 28, 2022. The *Washington Post* reported that “a panel of federal judges expressed skepticism” regarding the ERA’s viability.



Judge Robert Wilkins: “Why shouldn’t the archivist just certify and publish [the ERA], and let Congress decide whether the deadline should be enforced...?”

Deputy Assistant Attorney General Sarah Harrington: “The Constitution doesn’t contemplate any role for Congress at the back end. Congress proposes the amendment, it goes out into the world, and the states do what they’re going to do.”

-from the oral argument session in *Illinois v. Ferriero*, U.S. Court of Appeals for the District of Columbia, September 28, 2022

In one noteworthy exchange during the oral argument, the very senior Justice Department lawyer arguing on behalf of the Archivist, Deputy Assistant Attorney General Sarah Harrington, was asked by Judge Robert Wilkins, “Why shouldn’t the Archivist just certify and publish [the ERA], and let Congress decide whether the deadline should

be enforced...?” Harrington replied: “The Constitution doesn’t contemplate any role for Congress at the back end. Congress proposes the amendment, it goes out into the world, and the states do what they’re going to do.”

Harrington’s answer could only be understood as dismissive of the “congressional promulgation” theory.

## The Campaign Against the Archivists (2019-date)

Illinois and Nevada carried forward the legal case during 2020-2022, but ERA revivalist leaders inside and outside of Congress spoke seldom about the courts. For the most part, in their public pronouncements, whether to journalists or others, they glossed over or simply did not mention the adverse judgments of federal courts, such as the ruling of Judge Contreras.

Instead, they directed their rhetoric and pressure campaigns mainly towards officials within the Executive Branch, insisting that the Justice Department withdraw the 2020 OLC opinion and agree that the ERA had been ratified, demanding that the Archivist certify the ERA notwithstanding ongoing federal court proceedings, and calling on President Biden to order his subordinates to do these things.

However, the ERA revivalists failed to achieve any of those goals during 2020-2022.

The Biden Administration’s Justice Department did re-examine the 2020 OLC memo on the ERA, concluding with issuance of a short memorandum opinion on January 26, 2022. Assistant Attorney

General for Legal Counsel Christopher Schroeder wrote that some of the issues addressed in the 2020 OLC opinion related to congressional powers “were closer and more difficult than the opinion suggested,” but he did not repudiate any of them, and he did not alter the core conclusions that the deadline was valid and that the ERA has not been ratified.

Schroeder also wrote that “Congress is entitled to take a different view,” which was understood to refer to a pending joint resolution that purported to retroactively remove the ERA’s ratification deadline. Since OLC guidance is binding only upon agencies of the Executive Branch, Schroeder’s observation that Congress was free to disagree was simply a truism. Pro-ERA activists misrepresented Schroeder’s observation as a judgment that the “deadline removal” resolution, if adopted by Congress, would be legally effective, but Schroeder conspicuously expressed no judgment regarding that constitutional question.

Schroeder’s memorandum also indicated that upcoming court rulings “may soon determine or shed light upon” the constitutional status of the ERA, a position consistent with statements by Attorney General Merrick Garland (previously a federal court of appeals judge) and Schroeder during their Senate confirmation proceedings in 2021.



BRIEFING ROOM

## Statement from President Biden on the Equal Rights Amendment

JANUARY 27, 2022 • STATEMENTS AND RELEASES

Today, as the House announces a resolution on the Equal Rights Amendment, I once again want to express my support for the ERA loudly and clearly. I have been a strong supporter of the ERA ever since I first ran for the Senate as a 29-year-old. We must recognize the clear will of the American people and definitively enshrine the principle of gender equality in the Constitution. It is long past time that we put all doubt to rest. 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. No one should be discriminated against based on their sex—and we, as a nation, must stand up for full women’s equality.

###

contempt for the judgments and proceedings of federal courts. The President’s gesture will not affect any votes in the Senate.” (The 117th Congress ended on January 3, 2023, without Senate Majority Leader Chuck Schumer ever forcing any kind of vote on the “deadline removal” resolution.)

Schroeder’s January 26, 2022 memorandum was a far cry from the answer that ERA activists in Congress or outside of Congress had been pressing for. At a media event the next day (January 27, 2022), Congresswoman Maloney — the then-chair of the Oversight and Reform Committee in the House of Representatives, which has statutory oversight authority over the National Archives and Records Administration — [lashed out at Ferriero](#): “He’s the one holding it back. It’s a technicality...It’s ridiculous that he’s holding this up.”

The day after Schroeder’s memorandum was released, 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.”

Douglas Johnson, director of the National Right to Life *ERA Project*, commented at the time, “The President is urging the Senate to adopt a resolution ‘recognizing ratification of the ERA,’ even though the official position of the Justice Department, which they are defending in court, is that the ERA has not been ratified. This memo appears to be an awkward attempt to appease political activists, while not displaying open

# THE EQUAL RIGHTS AMENDMENT

At the same press event, Rep. Jackie Speier (D-Calif.) played “good cop”: “If the Archivist wants to go down in history for a good reason, he should certify it...Then it will be law...[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.”

This political pressure campaign aimed at getting a federal agency head to disregard federal court rulings drew not condemnation, but promotional amplification in such major media organs as [The New York Times](#), [NPR](#), [NBC News](#), and [The Atlantic](#).

The Washington Post  
Democracy Dies in Darkness

<https://www.washingtonpost.com/politics/2022/02/09/era-us-archivist-anatomy-false-claim/>

Fact Checker

## The ERA and the U.S. archivist: Anatomy of a false claim

Analysis by Glenn Kessler  
The Fact Checker  
February 9, 2022 at 3:00 a.m. EST



“Even if you are a political junkie, there’s a good chance you didn’t realize that the United States Constitution grew 58 words longer this week,” wrote *The New York Times* editorial board member Jesse Wegman in an essay titled, [“The ERA Is Now the Law of the Land. Isn’t It?”](#) Although the piece ran on for 2300 tendentious words, Wegman didn’t find room to mention that federal District Judge Contreras (the Obama appointee) had ruled that the ERA had not been ratified.

However, there were some exceptions to the general pattern of media amplification of misinformation — notably, 2200-word rebuke from the *Washington Post* Fact Checker, which in February 2021 awarded Congresswoman Maloney “Four Pinocchios” (the maximum-deception rating) for her claims about status of the ERA and the Archivist’s duties with respect to the ERA. The critique noted that “...two major court rulings have concluded that

the ERA’s ratification deadline...expired, a position embraced by both the Trump and Biden Justice Departments.” ([“The ERA and the U.S. archivist: Anatomy of a false claim,”](#) February 9, 2022)

On February 24, 2022, NARA issued a new statement reiterating that neither its position nor that of the OLC had changed regarding the certification of the ERA. NARA explained that the 2020 OLC memo stated that the ERA “could not be certified,” and that the January 26, 2022 OLC memorandum “acknowledges and does not modify this conclusion.”

Nevertheless, Maloney and other prominent Democrats in Congress continued to insist that the ERA had been ratified and should be certified by the Archivist as part of the Constitution. On March 8, 2022, Maloney and six other House members wrote to Senate Majority Leader Chuck Schumer, asserting that “the ERA went into effect” on January 27, 2022. (Section 3 of the ERA says that it “shall take effect two years after the date of ratification.”)

## Press Statement in Response to Media Queries About the Equal Rights Amendment

Media Alert ·  
Thursday, February 24, 2022

### Washington, DC

In response to recent media reports that generated a large number of queries about the Equal Rights Amendment, we have issued the following statement to the media beginning in late January 2022:

In its January 6, 2020 opinion, the Office of Legal Counsel (OLC) concluded “that Congress had the constitutional authority to impose a deadline on the ratification of the ERA and, because that deadline has expired, the ERA Resolution is no longer pending before the States.” (OLC 2020 Opinion, at p.2.) Accordingly, the 2020 OLC opinion goes on to state that “the ERA’s adoption could not be certified under 1 U.S.C. § 106b.” (OLC 2020 Opinion, at p.37.) OLC’s recently issued January 26, 2022 memorandum on the “Effect of 2020 OLC Opinion on Possible Congressional Action Regarding Ratification of the Equal Rights Amendment” acknowledges and does not modify this conclusion. That new memorandum also states (pp. 2-3) that “as a co-equal branch of government, Congress is entitled to take a different view of these complex and unsettled questions” and that therefore “the 2020 OLC Opinion is not an obstacle either to Congress’s ability to act with respect to ratification of the ERA or to judicial consideration of the pertinent questions.”

On March 22, 2022, Maloney sent Archivist Ferriero a letter, again urging him to immediately certify the ERA. She made no reference to Judge Contreras' ruling that the ERA had failed ratification, but she did explicitly invoke her position as chairwoman of the House committee with oversight authority over the agency directed by Ferriero, the National Archives and Records Agency (NARA).

Higher-ranking congressional Democrats also lent their voices to the ongoing misinformation campaign. On November 16, 2021, House Speaker Nancy Pelosi (D-Calif.) said that the ERA was on "the cusp of being enshrined into the Constitution." On September 28, 2022, House Majority Leader Steny Hoyer (D-Md.) said that certification was "long overdue."



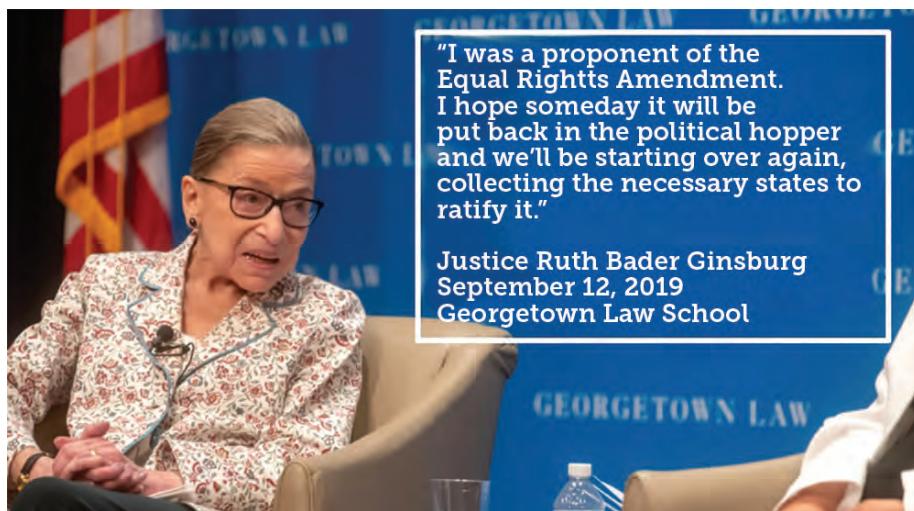
Judge M. Margaret McKeown: "Leaving aside whether any deadlines could be extended, what's your prognosis on when we will get an Equal Rights Amendment on the federal level?"

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

Ferriero, who was personally strongly pro-ERA, retired at the end of April 2022. In an exit interview on C-SPAN (May 1, 2022), [Ferriero explained](#), "I can tell you that Ruth Bader Ginsburg twice told me, in this building, we need to start over [on the Equal Rights Amendment]... the time limit has expired, so that's a constitutional question."

When Ferriero announced his retirement, Chairwoman Maloney told *The Atlantic*'s Russell Berman that a commitment to certify the ERA "should be a litmus test for whoever is appointed" to replace Ferriero (February 2022).



In August 3, 2022, President Biden nominated Dr. Colleen Shogan as Archivist. In testimony before the Senate Homeland Security & Governmental Affairs Committee on September 21, 2022, Senator Rob Portman (R-Ohio) asked Shogan, "If confirmed, would you continue to abide by the January 2020 OLC opinion, as your predecessor did?" [Shogan replied](#), "Yes, I would," adding, "I think who will decide the fate of the ERA is the federal judiciary and/or Congress."

For reasons not related to the ERA controversy, Shogan's nomination died without action by the full Senate at the end of the 117th Congress. On January 3, 2023, President Biden renominated Shogan. As she awaits another round of confirmation proceedings, ERA activists continue to demand that President Biden order the Acting Archivist, Debra Wall, to certify the ERA as part of the Constitution.

# THE EQUAL RIGHTS AMENDMENT

## Overt Attacks on Article V and on the Role of the Courts

The questions surrounding the constitutional status of the ERA are purely questions of law, and it is the role of the judiciary “[to say what the law is](#).” Yet many ERA advocates have been engaged in strenuous attempts to short-circuit judicial review of those constitutional questions, or even to assert that the federal courts do not have authority to decide whether the ERA has been ratified or is long expired.

Kamala Lopez, co-director of the activist group Equal Means Equal, in an April 15, 2022 alert, exhorted supporters to “pressure” the Archivist to publish the ERA, noting, “What we really DON’T want is for the D.C. Court to hand down a ruling against us BEFORE the ERA is published...”

According to [a report by Lisa Rabasca Roepe on fastcompany.com on September 15, 2022](#), “Advocates are now reluctant to have the Supreme Court decide the fate of the ERA given the court’s recent *Dobbs v. Jackson Women’s Health Organization* ruling that overturned *Roe v. Wade*, says Ting Ting Cheng, director of the ERA Project at Columbia Law School Center for Gender and Sexuality Law.”

Implicitly recognizing the utter flimsiness of their legal claims, some prominent ERA advocates go further, and now openly assert that the federal courts simply have no authority to say whether or not the ERA is part of the Constitution.

For example, longtime pro-ERA activist-attorney Kate Kelly, while serving as counsel to Congresswoman Maloney, 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.”

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.”

However, even the prospect of making the text of the Constitution a plaything for shifting bare majorities in Congress is too moderate a remedy to suit some leading ERA advocates. For example, on December 5, 2022, *The New Republic* published an essay by Julie C. Suk, professor of law at Fordham University and author of a popular advocacy-history book about the ERA, *We the Women: The Unstoppable Mothers of the Equal Rights Amendment* (2020).

In the essay, titled “[The Oft-Neglected Enemy of Democracy: Article V](#),” Suk argued for “a constitutional revolution — a new constitution written without following the amendment rules of the eighteenth-century Constitution we now live under.” Only by such extra-constitutional means, Suk argued, could one achieve “a new constitution, fit to govern all of us in the twenty-first century.” In the alternative, Suk said, “If this country is too big to reach agreement on that or other constitutional essentials, could healthier democracies emerge from peacefully negotiated secessions?”

## **The ERA Revival Campaign Fizzled in the 117th Congress (2021-2022) and Faces Dim Prospects in the 118th Congress (2023-2024)**

Even though ERA revivalists claim that the ERA “is already part of the Constitution,” they have also clamored for Congress to adopt a joint resolution that purportedly would retroactively remove the ratification deadline from the 1972 ERA resolution. As NRLC explained most recently in a letter to the U.S. Senate dated November 16, 2022 (reproduced on pages 68-69), this proposal “is unconstitutional in at least four different ways.”

Under Democratic control in 2021, the U.S. House of Representatives passed the “deadline removal” resolution (H.J. Res. 17) on a vote of 222-204. It had the support of all 218 voting Democrats, but only four out of 208 voting Republicans. Douglas Johnson, director of National Right to Life’s *ERA Project*, commented at the time, “This was ERA’s poorest showing in the House in 50 years. The tally was 62 votes below the two-thirds margin that the Constitution requires when it actually exercises its powers under Article V, as opposed to engaging in cheap theatrical performances.” (See table on the next page.)

At about the same time, the ERA Coalition unveiled a “Roadmap to 60” campaign—its plan to muster the 60 votes needed to pass the measure over an anticipated filibuster in the 100-member Senate. They started with the declared support of all 50 Democratic senators and two Republicans (Murkowski of Alaska and Collins of Maine), so they needed to pick up eight additional supporters.

Twenty-one months after the House approval, H.J. Res. 17 died not with a bang but a whimper. Senate Majority Leader Chuck Schumer (D-N.Y.) never forced a vote on the measure, and it expired on January 3, 2023, with the end of the 117th Congress. ERA advocates were unable to publicly point to even a single new supporter among Senate Republicans, beyond the two Republican senators who had been on board for years.

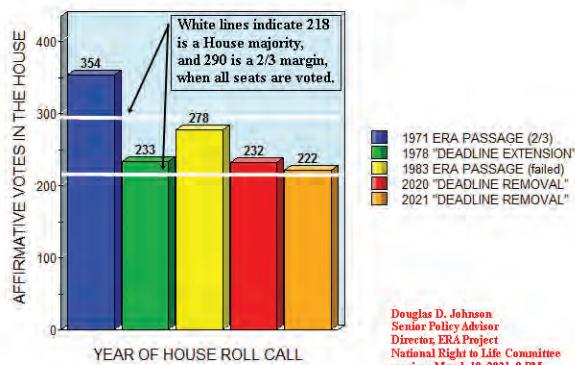
On December 22, 2022, Congresswoman Cori Bush (D-Mo.) and four other House ERA supporters issued a statement indicating that Schumer told them “he will aim to hold a vote on the ERA before the end of next March.” Yet 60 votes will still be required in the Senate – and in the meantime, the 2022 election shifted control of the House of Representatives to Republicans, which creates a very steep slope for those who may wish for the House to again approve a “deadline removal” joint resolution.

**“The entire ‘deadline removal’ enterprise is pure political theater, anyway,”** commented National Right to Life’s Douglas Johnson. **“Retroactive deadline nullification is a constitutional and temporal absurdity. ERA advocates want us to 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, and yet that is clearly what Article V requires.”**

# THE EQUAL RIGHTS AMENDMENT

## ERA's Sinking Support in Congress: How Support for the Equal Rights Amendment in the U.S. House Has Plunged Over a 50-Year Period

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



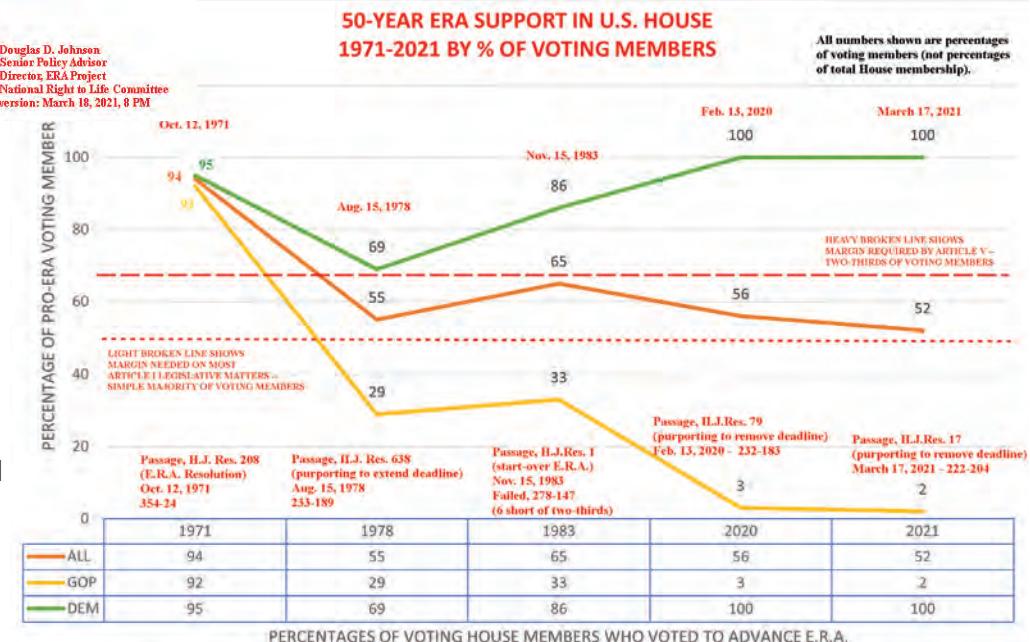
Since 1972, the U.S. Senate has voted only once on an ERA-related matter – in 1978, when a Congress controlled by strong Democratic majorities approved, by simple majority votes (not two-thirds) a resolution that purported to extend the ERA's ratification deadline by 39 months, to mid-1982. The only 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 2020 and 2021.

Analysis of these roll calls shows a precipitous drop off 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 fell 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 now loudly proclaimed by pro-ERA activists.

When Congress approved the Equal Rights Amendment resolution for submission to the states in 1971-1972, it did so by lopsided 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.)

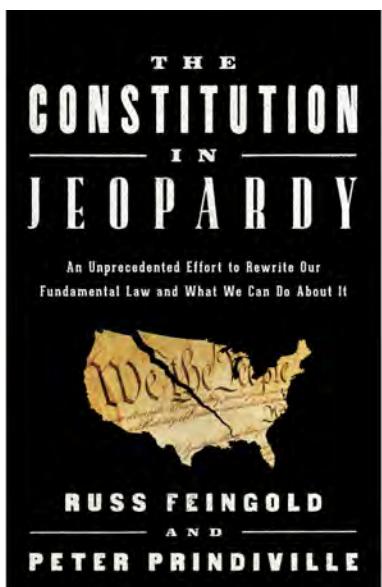


## Doublethink by Democrats on Rescissions

Four state legislatures (Nebraska, Tennessee, Idaho, and Kentucky) ratified the ERA, but then, before the ratification deadline of March 22, 1979, adopted new resolutions rescinding their previous ratifications. On lists of rescinding states, South Dakota usually also appears, but the South Dakota legislature did something different: On March 5, 1979, it adopted a resolution making it clear that its original ratification would expire on March 22, 1979, which arguably would have been the case anyway.

Nearly all Democratic state attorneys general have now explicitly argued in briefs submitted to federal courts in ERA-related litigation, or elsewhere, that Article V does not mention rescissions and that rescissions therefore must be rejected as unconstitutional. All or nearly all current Democratic members of Congress have also rejected the constitutionality of rescissions, by cosponsoring and/or voting for resolutions that implicitly or explicitly disavow the rescissions on the ERA.

Yet, many of these same Democratic office holders — for example, prominent Democratic Congressman Jamie Raskin of Maryland — have supported rescissions on other constitutional amendments, and/or have supported state legislatures' rescissions of applications for a constitutional convention, which is the alternative method of amending the Constitution under Article V.



Activist-author Russ Feingold, in his 2022 book opposing an Article V constitutional convention (*The Constitution in Jeopardy*), celebrates rescissions as a tool for preventing the convening of an Article V constitutional convention. Yet in March 2022, Feingold sent a letter to Congresswoman Carolyn Maloney asserting that the state legislative rescissions on the ERA were constitutionally "invalid."

Feingold, a former U.S. senator, also said in the letter that the ERA's ratification deadline was constitutionally invalid. Yet when Feingold was himself the chairman of the Constitution Subcommittee of the U.S. Senate Judiciary Committee in 2009, he personally authored a proposed constitutional amendment (S.J. Res. 7, to require that Senate vacancies be filled by election) that contained a seven-year deadline in the Proposing Clause — *identical in wording and placement to the ratification deadline found in the 1972 ERA*. Feingold even chaired a hearing on the proposal, and shepherded it to approval by the full Senate Judiciary Committee, without ever altering the deadline formulation and placement that he now characterizes as unconstitutional.

Many Democrat-aligned interest groups have actively lobbied state legislatures to rescind their Article V applications for a constitutional convention, often successfully. In 2020, Ellen Nissenbaum, senior vice-president for government affairs for the Center on Budget and Policy Priorities, was among the activists who privately expressed concern about the contradiction. "We (working with other national and state groups) have been able to prevent a new Constitutional Convention ONLY by getting several states to rescind their previously approved BBA [balanced budget amendment] resolutions," Nissenbaum wrote in a 2020 email to allies, which later leaked. "So if Democrats or ERA proponents argue...that 'rescissions don't count,' they will hand a powerful argument to the right that will be used in court... and we could find ourselves on the way to a new Constitutional Convention." Likewise, Democracy 21 President Fred Wertheimer wrote in a leaked memo that he agreed this was "a new and potentially serious problem..."

# THE EQUAL RIGHTS AMENDMENT

“ERA revival activists have shown they will run roughshod over any norm or precedent that stands in their way, and all too many Democratic office holders have shown themselves to be utterly compliant,” said National Right to Life ERA Project Director Douglas Johnson. “The doublethink of many Democratic activists and office holders about state legislative rescissions under Article V is one glaring example of an unprincipled approach to the constitutional amendment process.”

## The ERA-Abortion Connection: The Mask Comes Off

National Right to Life has opposed the ERA for decades, recognizing that the ERA language proposed by Congress in 1972 could be construed to invalidate virtually all limitations on abortion, and to require government funding of abortion.

National Right to Life’s consistent position was reiterated in a November 16, 2022 letter to U.S. senators, which concluded, “Any vote to advance the resolution will be accurately characterized as supportive of inserting language into the U.S. Constitution intended to severely jeopardize any limits on abortion, including late abortions, and intended to require government funding of elective abortion.” (The letter is reproduced on pages 68-69.)

In decades past, such pro-life objections were publicly rejected by most ERA advocates, who often derided assertions of an ERA-abortion link with such terms as “misleading,” “scare tactic” and even “a big lie.” As recently as 2019, the pro-ERA leader in the House of Representatives, Rep. Carolyn Maloney (D-N.Y.), lectured Republicans at a hearing on the ERA, stating, “The Equal Rights Amendment has absolutely nothing to do with abortion...saying so is divisive and a tool to try to defeat it. So please don’t ever say that again.” Likewise, on February 13, 2020, Speaker Nancy Pelosi said on the floor of the U.S. House, “This [the ERA] has nothing to do with the abortion issue.”

Some prominent ERA advocates now acknowledge that such denials were merely a strategic deception. Feminist journalist Barbara Rodriguez explored this history in an article titled, “Key Equal Rights Amendment activists long avoided tying it to abortion,” that appeared on *The 19th* on August 17, 2022. Excerpts:

“For a long time, it was kind of, ‘Don’t talk about that.’ Or, ‘That will just scare off the Republicans, or that will make people in Congress not support the ERA,’ said Ting Ting Cheng, director of the ERA Project at the Center for Gender and Sexuality Law at Columbia University.

[Activist-attorney Kate] Kelly said older ERA activists made a strategic decision to separate the amendment’s impact on abortion. “These are pro-choice people. It was a strategic question,” said Kelly. “They thought that connecting the two caused them to lose.” [ERA Coalition President Zakiya] Thomas said she would agree with that assessment.

But even in 2019 and 2020, the Maloney and Pelosi statements quoted above were outdated as talking points. Most pro-ERA and pro-abortion activists, attorneys, and allied officeholders had already dropped the pretext, and were openly proclaiming that the ERA is needed precisely to reinforce and expand federal “abortion rights.” By the latter half of 2020, ERA champions in and out of Congress were openly proclaiming that the ERA was urgently needed precisely to preserve federal constitutional “abortion rights.” Since the U.S. Supreme Court overturned *Roe v. Wade* in June 2022, these proclamations have only become louder and more insistent.

A few examples:

- ERA Project, Columbia Law School ([May 3, 2022](#)): “The Equal Rights Amendment...would protect the right to abortion and the full range of reproductive healthcare and is more critically needed now than ever before.” On March 4, 2022, the Columbia Law School ERA Project sponsored [a two-hour symposium panel](#) about grounding “reproductive rights” in the Equal Rights Amendment.
- The ACLU, in a letter to the U.S. House of Representatives (March 16, 2021): “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...”
- The National Organization for Women, in a monograph circa 2015, 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 . . .”
- NARAL Pro-Choice America, in a national alert sent out on March 13, 2019, asserted that “the ERA would reinforce the constitutional right to abortion . . . [it] would require judges to strike down anti-abortion laws . . .”



“Emily Martin, general counsel for the National Women’s Law Center — which supports the ERA...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.’”

— “Lawmakers pledge ERA will pass in Virginia. Then what?,” by Sarah Rankin and David Crary, Associated Press, January 1, 2020

• 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).

- *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.” She also said, “If you were rooted in an equality argument, those things would not matter.”

# THE EQUAL RIGHTS AMENDMENT

- Kate Kelly, an attorney-activist who worked for Congresswoman Carolyn Maloney in 2021, was asked on January 24, 2021 whether the ERA would “codify *Roe v. Wade*.” She answered, “My hope is that what we could get with the ERA is FAR BETTER than *Roe*.”
- Kate Kelly also wrote an essay titled “[The Equal Rights Amendment Is a Comprehensive Fix That Can Save Roe](#),” published March 22, 2022. Here are two quotes to give you the flavor: “*Roe* is on the brink of failing. So what is the comprehensive fix that can save *Roe* and perhaps even expand access to abortion? The Equal Rights Amendment.” And: “Though some ERA advocates have shied away from making the connection between these issues in the past, they should be touted as the main reasons we still need the ERA today.”

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 (January 2023), 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 v. 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.”

Abundant additional documentation on the ERA-abortion connection, including [this quote sheet](#), is available on the [NRLC website ERA page](#).

## ADDITIONAL RESOURCES

Additional historic documentation on the Equal Rights Amendment can be found at [nrlc.org/federal/era](#).

Douglas Johnson, director of the ERA Project for National Right to Life Committee, is the pro-life movement’s subject matter expert on the Equal Rights Amendment. Mr. Johnson has been extensively involved in the legislative and legal disputes surrounding the Equal Rights Amendment since 1982, and has written for many publications on the subject, including *American Politics, America*, and *The New York Sun*.

Mr. Johnson is also a contributor to a non-NRLC Twitter account @ERANoShortcuts, which tracks ERA-related developments “from an ERA-skeptical perspective.” He can be reached through the National Right to Life Media Relations Department at 202-626-8825, mediarelations@nrlc.org



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202-378-8863

November 16, 2022

**Re: Scorecard alert on H.J. Res. 17 / S.J. Res. 1, purporting to retroactively “remove” deadline on the long-expired, pro-abortion 1972 Equal Rights Amendment**

Dear Senator:

Before the end of the current Congress, the Majority Leader may force a cloture vote on a motion to proceed to a measure (H.J. Res. 17) that purports to retroactively “remove” the ratification deadline that the 92nd Congress included in the Equal Rights Amendment Resolution submitted to the states on March 22, 1972 – over 50 years ago.

After H.J. Res. 17 passed the House of Representatives on a near-party-line vote on March 17, 2021, it was held at the desk under Rule 14. The Senate companion, S.J. Res. 1, introduced by Senators Cardin and Murkowski, has been in the Judiciary Committee for 22 months without action; it currently has 52 co-sponsors (every Senate Democrat, plus Senators Murkowski and Collins).

For the reasons summarized below, the National Right to Life Committee, the federation of state right-to-life organizations, urges you to oppose the motion to advance H.J. Res. 17, and will include this roll call in its scorecard of key votes of the 117th Congress.

Leaders of prominent pro-abortion and pro-ERA advocacy groups now openly proclaim that they believe the 1972 ERA should be construed to erect a federal constitutional barrier to virtually any limits on abortion or government funding of abortion. For decades, leading ERA advocates denied that was the case, or deflected such interpretations, but those denials and deflections were merely “[a strategic decision](#),” we are now told (i.e., a deception). The mask has now been [discarded](#). All pro-life senators would be well advised to take the pro-abortion advocacy groups at their current word as to how they intend to employ the vague 1972 language if it somehow ever becomes part of the Constitution.

The 92nd Congress included a seven-year ratification deadline in the ERA Resolution. On March 5, 2021, federal District Judge Rudolph Contreras (an appointee of President Obama) [ruled](#) that Congress had the constitutional power to impose such a deadline, that it would have been “absurd” for the Archivist to disregard the deadline, and that legislative actions that occurred in Nevada (2017), Illinois (2018), and Virginia (2020) “came too late to count.” Illinois and Nevada appealed that ruling. Oral arguments were presented to a three-judge panel (Judges Wilkins, Childs, and Rao) on September 28, 2022, and a ruling is expected in the months immediately ahead. As the *Washington Post* pointed out in [a February 9, 2022 fact check](#), over [the past 40 years](#), “Every time the issue has been litigated in federal court, most recently in 2021, the pro-ERA side has lost, no matter whether the judge was appointed by a Democrat or Republican.” If H.J. Res. 17 is presented to you during the lame-duck session, it should be seen as a last-minute attempt to muddy the waters and confuse the public before the court of appeals rules. On the ERA, “the rule of law” is not what leading ERA-revivalists are seeking.

H.J. Res. 17 is unconstitutional in at least four different ways.

First, on the ERA, the legitimate constitutional role of Congress in the amendment process ended when it submitted the ERA Resolution to the states on March 22, 1972. As Deputy Assistant Attorney General Sarah Harrington [asserted](#) before the D.C. Circuit on September 28, 2022, “The Constitution doesn’t contemplate any role for Congress at the back end. Congress proposes the amendment, it goes out into the world, and the states do what they’re going to do.” H.J. Res. 17 is an exercise in political theater that shows contempt for long-established constitutional requirements.

**Defending Life in America Since 1968**

# THE EQUAL RIGHTS AMENDMENT

NATIONAL RIGHT TO LIFE IN OPPOSITION TO ERA “DEADLINE REMOVAL”

2

Second, Article V does not allow Congress to engage in a retroactive “bait-and-switch.” As Judge Contreras observed in his 2021 ruling upholding the deadline, “Inclusion of a deadline was a compromise that helped Congress successfully propose the ERA where previous attempts to pass a proposal had failed.” The current Congress lacks power to retroactively edit that legislative compromise, while simultaneously claiming the congressional super-majorities and subsequent state ratifications that flowed from the compromise. Judge Contreras also noted that 30 of the states that ratified the ERA specifically quoted or referred to the deadline in their ratification instruments.

(If Congress actually had bait-and-switch powers, they could as easily be used to undercut an amendment properly submitted to the states, if simple majorities of a later Congress disliked it— for example, by retroactively shortening a deadline in order to head off anticipated ratification, or by retroactively changing the mode of ratification from state legislatures to state conventions mid-way through the ratification process. Such manipulations are incompatible with Article V.)

Third, even if Congress somehow did hold power to execute a retroactive bait-and-switch, the authors of H.J. Res. 17 have [formally declared the resolution to be an exercise of Congress’ Article V powers](#). That means approval would require a *two-thirds* vote, as is always the case when Congress acts under Article V. This is one of the two grounds on which the only federal court ever to review the purported 1978 “deadline extension” ruled that it was unconstitutional. (*Idaho v. Freeman*, 1981)

Fourth, even setting aside the specific requirements of Article V, no Congress has power to act on any measure after it has *expired*. The current Congress can no more act on the long-expired ERA Resolution than it can now override a veto by President Carter. Certainly, Congress has the power to again submit the same proposed amendment text to the states, with or without a ratification deadline, but it must do so by the procedures spelled out in Article V, including the requirement for two-thirds approval by each house, within a single Congress. As the late Justice Ruth Bader Ginsburg said on February 10, 2020:

*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"?*

National Right to Life intends to score and weigh heavily any roll call on advancing this manifestly unconstitutional resolution. In our communications with our members, supporters, and affiliates nationwide, any vote to advance the resolution will be accurately characterized as supportive of inserting language into the U.S. Constitution intended to severely jeopardize any limits on abortion, including late abortions, and intended to require government funding of elective abortion. Should you have any questions, please contact us at (202) 378-8863, or via e-mail at [jpopik@nrlc.org](mailto:jpopik@nrlc.org). Thank you for your consideration of NRTL’s position on this matter.

Respectfully submitted,



Carol Tobias  
President



David N. O’Steen, Ph.D.  
Executive Director



Douglas D. Johnson  
Senior Policy Advisor / Director, ERA Project



Jennifer Popik, J.D.  
Legislative Director



# 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](http://facts.nrlc.org)



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# 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.

THE SUPREME COURT  
AND 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.

### ***Simopoulos 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)***

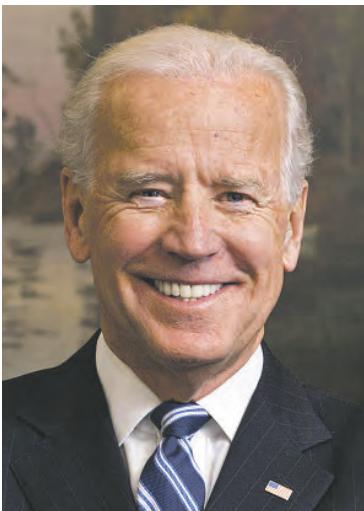
By a vote of 5-3, the Court declared unconstitutional Texas laws requiring abortion clinics to meet surgical-center standards, and requiring abortionists to have admitting privileges at a hospital within 30 miles. The majority ruled that these requirements constituted an “undue burden” on access to previability 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.”

## ***Juno 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*.

## ***Dobbs v. Jackson Women’s Health Organization (2022)***

In a 5-3-1 decision, the Court reversed its decisions in *Roe v. Wade* (1973) and *Planned Parenthood of Southern Pennsylvania v. Casey* (1992). In the case, which centered on Mississippi’s “Gestational Age Act,” extending legal protections to unborn children at 15 weeks gestation, the Court held “that the Constitution does not confer a right to abortion. *Roe* and *Casey* must be overruled, and the authority to regulate abortion must be returned to the people and their elected representatives.”



# THE PRESIDENTIAL RECORD ON LIFE

## President Joseph R. Biden 2021-present

*"I believe Roe v. Wade was the correct decision as a matter of constitutional law, an application of the fundamental right to privacy and liberty in matters of family and personal autonomy... The only way we can secure a woman's right to choose and the balance that existed is for Congress to restore the protections of Roe v. Wade as federal law."*

-Joseph R. Biden

- **Mexico City Policy:** In one of his first acts in office, President Biden repealed the Trump-Era “Protecting Life in Global Health Assistance” or “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.
- **Promoting Abortion-on-Demand Until Birth:** President Biden strongly supports the radical so-called Women’s Health Protection Act. This legislation would essentially remove all legal protections for unborn children on the federal and state level and prevent future protections for unborn children.
- **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. The FDA will also permit pharmacists to dispense chemical abortion drugs, and will permit these dangerous drugs to be sent through the mail.
- **Funding Abortion Providers:** In April 2021, President Biden’s Health and Human Services Department overturned the Trump Administration’s “Protect Life Rule” on Title X family planning funding. The new Biden Rule means that millions in Title X funding will flow 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. By Executive Order, President Biden directed his administration to consider actions to advance access to abortion, including an effort to encourage states to apply for Medicaid waivers to pay for abortion travel.
- **Abortion Funding in the Military:** Biden’s Department of Veterans Affairs has announced they will pay for and provide abortions for “health reasons,” defined broadly as to be for any reason. This has been statutorily prohibited since 1992. Under the Biden Administration, the Department of Defense announced it will pay the travel and transportation costs for military members and dependents to travel to obtain elective 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:** President Biden promised to only appoint justices who support a right to abortion, nominating Ketanji Brown Jackson to serve on the Supreme Court. Her nomination was strongly backed by Planned Parenthood, NARAL, and other abortion groups.



# 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 38<sup>th</sup> 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 of 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.

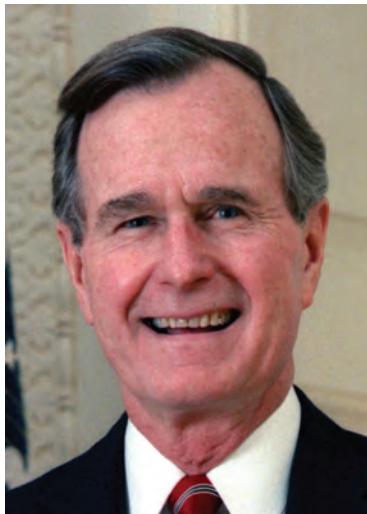


# THE PRESIDENTIAL RECORD ON LIFE

## 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 affiliates in each of the 50 states and the District of Columbia, and more than 3,000 local chapters. National Right to Life is governed by a representative board of directors with a delegate from each 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, which 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 Black 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.nationalrighttolifenews.org](http://www.nationalrighttolifenews.org) — 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](http://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/stateofabortion2023.pdf](http://www.nrlc.org/uploads/communications/stateofabortion2023.pdf).



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