

THE
STATE_{OF}
ABORTION
IN THE UNITED STATES

11TH EDITION

February 2024

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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CAROL TOBIAS

National Right to Life President

In 1973, the U.S. Supreme Court found, in the U.S. Constitution, an invisible “right” to kill preborn children. Even before that horrendous decision, National Right to Life was organizing and mobilizing state affiliates to defend the right to life for our littlest brothers and sisters.

It took 49½ years of determination and persistence, but *Roe v. Wade* and the 1992 *Planned Parenthood v. Casey* decisions were finally overturned. Justice Alito, writing for the majority in *Dobbs v. Jackson*, 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.

Since that eventful decision, in which 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 into state law the most extreme abortion protections possible. Within these pages is a snapshot of where we are 1-1/2 years after the Supreme Court's honorable decision in *Dobbs*.

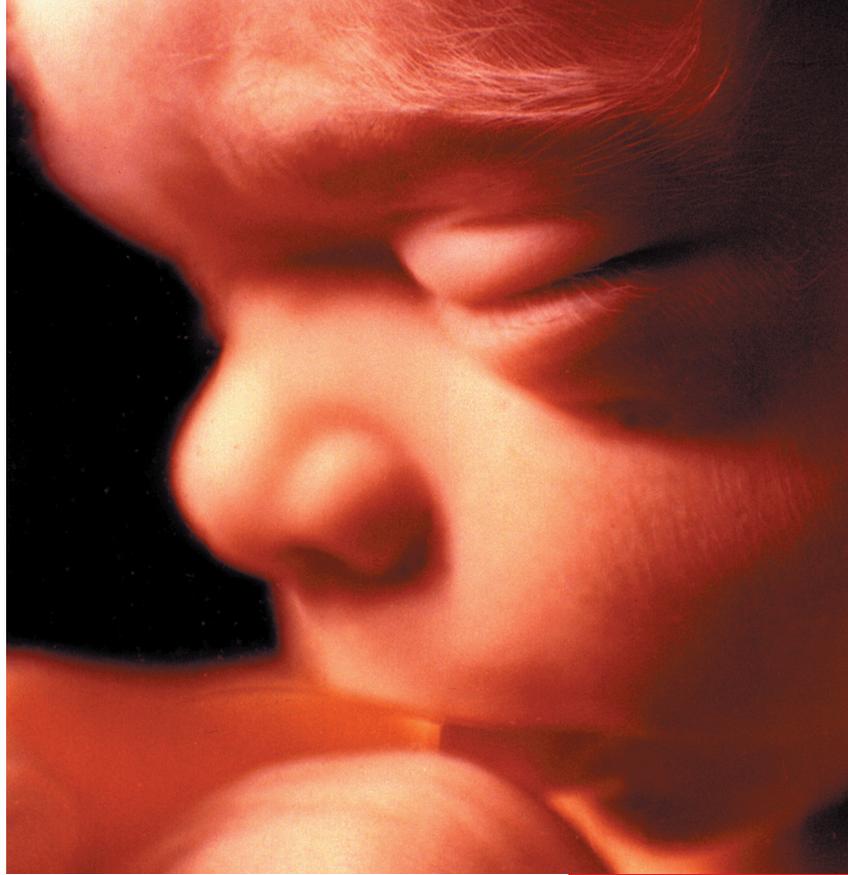
From recent data analyzed in these pages, we know the annual number of abortions was on the increase in the years leading up to *Dobbs*, largely due to a highly-intensified promotion of the abortion pill. However, more recent counts appear to show that as many as 89,000 preborn children have been saved since *Dobbs* thanks to new protective state laws.

NRLC and its affiliates will continue to promote legislative efforts that provide legal protection to unborn children. We will also continue to offer hope and help to their mothers. No woman should be led to believe that ending the life of her unborn child is the “solution” to any current difficulty she may be facing. America is better than that. 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 eleventh 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.



Fifty Years of Abortion in America Abortion Statistics Before and After *Dobbs*



Before *Dobbs*, there was one critical benchmark in U.S. abortion history – January 22nd, 1973, the date *Roe v. Wade* was decided, legalizing abortion on demand throughout all nine months of pregnancy. Everything was measured from that point forward.

Now, with the Supreme Court's *Dobbs* decision overturning *Roe*, rejecting the idea that there is any national right to abortion, there is a new benchmark – June 24, 2022, the point at which many states were once again able to pass and enforce legislation protecting unborn children.

After *Roe*, Before *Dobbs*

Under *Roe*, measuring abortion and its effects was never easy or precise, owing to the secrecy often surrounding the procedure and the general presence of its practitioners outside the medical mainstream, but the task was relatively straightforward—simply report the number of abortions and the characteristics of the patients and “providers.” Two entities, one public, one private, regularly counted national abortions in the U.S. —the government, using the Centers for Disease Control (CDC), and an independent abortion industry offshoot, the Guttmacher Institute, which was at one time a special research affiliate of abortion giant Planned Parenthood.

Guttmacher relied on occasional surveys from abortion clinics or other “providers,” generally obtaining higher and what were believed to be more accurate estimates. The CDC relied on yearly reports from state health departments which varied in quality and completeness, but had the advantage of being published more frequently and in a standardized format that allowed for better measuring trends and making comparisons. Still, some abortionists did not report their abortions to government officials in some states, and some states did not report their numbers to the CDC, inevitably making their numbers lower and their data more incomplete.

Recorded history

What both sources showed were abortion numbers and rates skyrocketing after *Roe*, reaching a million a year in just a few years time (by 1975 for Guttmacher, 1977 for the CDC). Guttmacher showed abortion hitting a peak of just over 1.6 million in 1990, but dropping from that point as different pro-life laws like parental involvement, right to know, fetal pain, funding limitations, partial birth abortion bans, etc. took effect.

Abortion numbers, rates, and ratios fell over the next 25 years, reaching lows in 2016 and 2017

ABORTION statistics

United States Data and Trends

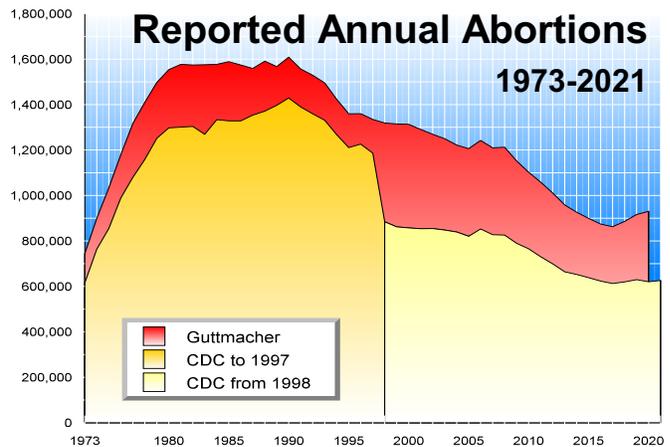
1973	744,610	615,831
1974	898,570	763,476
1975	1,034,170	854,853
1976	1,179,300	988,267
1977	1,316,700	1,079,430
1978	1,409,600	1,157,776
1979	1,497,670	1,251,921
1980	1,553,890	1,297,606
1981	1,577,340	1,300,760
1982	1,573,920	1,303,980
1983	1,575,000	1,268,987
1984	1,577,180	1,333,521
1985	1,588,550	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	846,181*
2007	1,209,640	827,609*
2008	1,212,350	825,564*
2009	1,151,600	789,116*
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	874,080	623,471*
2017	862,320	612,719*
2018	885,800	619,591*
2019	916,640	629,898*
2020	930,160	620,327*
2021	976,668§	625,978*
2022	951,168§	
2023	912,360§	

Guttmacher

CDC

*excludes NH, CA and at least one other state

§ NRLC projection for calculation



Before Dobbs, there were two basic sources of 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. It has been missing data from CA, NH 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. Both sources showed abortion skyrocketing after Roe, reaching a million annually in just a couple of years.
- Guttmacher showed abortion peaking at 1.6 million in 1990, but dropping from that point as different pro-life laws took effect.
- Abortion numbers, rates and ratios all fell over the next 25 years, reaching four-decade lows in 2016 and 2017.

From that point on, they began to rise again, largely owing to the promotion and proliferation of abortion pills, which comprised 53% of all abortions in 2020. Counting abortions became more difficult after Dobbs.

- Many clinics the CDC and GI relied upon for numbers closed, moved, or began sending clients out of state.
- Abortion pills were being promoted, sold on line and shipped to woman's homes, often illegally.

The Society of Family Planning (SFP), surveyed its members in the months right before and after Dobbs.

- SFP saw an immediate drop in states that protect the unborn and some shift to abortion friendly states.
- Overall, SFP saw 25,050 fewer abortions from July of 2022 through the end of the year.

U.S. economists looking at states with legal protections for the unborn child after Dobbs found 32,000 additional births in the first six months of 2023.

Half a century of losses
65,464,760
 Total abortions since 1973

Numbers 1973-2020 based on data reported by the Guttmacher Institute adjusted for GI projected "undercounts" and "missing providers" Calculations for 2021 and subsequent years based on CDC, GI data, adjusted by SFP counts and reports of U.S. economists. Formula and sources available on request. 1/24

UNITED STATES ABORTION NUMBERS

not seen since the first year of *Roe*. From that point on, though, they began to rise again, largely owing to the proliferation of abortion pills, first approved by the government in September of 2000 but growing to comprise 56% of all abortions by 2021.

That is generally where things stood in 2022 when the Supreme Court announced its *Dobbs* decision overturning the forty-nine-year-old *Roe* precedent. Abortions had fallen to their lowest levels since *Roe* in many states and then largely stabilized, with many states showing only small changes or newly growing numbers fueled by the broad availability and promotion of chemical abortifacients.

***Dobbs* impacts the abortion industry**

When *Dobbs* came a long, returning the issue of abortion's legality to the states, to the people and their representatives, measuring the numbers of abortions got more complicated.

Guttmacher and the CDC, used to having years to collect and publish their data, simply have not had the time to conduct their usual full national surveys and collate the data they typically use for their regular reports. The CDC's last official abortion surveillance was for 2021. Guttmacher's last full national survey covered 2020.

There are also new circumstances and factors that have made it difficult for these traditional counters to produce the sorts of comprehensive data they have published in the past.

New circumstances, new challenges

Many of the "providers" that Guttmacher or the government relied upon for their counts either moved, closed or lingered in some sort of legal limbo while the legislature or state courts worked out what would be the governing policy. How informative or forthcoming they might be under the circumstances is a legitimate question.

Clinics unable to perform abortions in some states have partnered with affiliated clinics in other states that do allow or promote abortions to refer or send clients to have their abortions done there. Reductions in numbers of abortion in one state may thus be (partly) matched by increases in neighboring states, with some states better tracking out-of-state abortions than others.

New policies put in place by the Biden administration allowing abortion pills to be sold and shipped to women's homes without any required physical exam or office visit encouraged the formation of many online abortion pill entrepreneurs and distributors. Showing little concern for women's health and sometimes even less regard for the laws governing abortion in particular states, some of these entities even brazenly shipped these dangerous pills in unmarked packages to customers residing in states where the sales and use of such pills was illegal.

Determining how to get an accurate count of these Do-It-Yourself chemical abortions from online pills is a real challenge. Promoters of these pills tout their sales figures, but these include some "preemptive" sales, where customers take the advice to stock up on these pills for "emergencies," and others who may buy the pills and never use them.

Measuring by other means

One trade association of providers, the Society of Family Planning (SFP), decided to send out monthly surveys of its membership once word leaked of the *Dobbs* decision and its anticipated legal consequences. Though some of its methods and estimates are questionable, they do appear to show an immediate drop off in states where unborn children were protected after June 2022.

The SFP “We Count” report also showed some increases in abortion-friendly states in the second half of the year, but not enough to make up for decreases seen in states protecting unborn children. Monthly reports from 2023 on showed out-of-state abortion travelers making up much of the difference, but the projections for many of these states contained a great deal of conjecture.

Guttmacher followed SFP’s lead and began performing and publishing its own monthly surveys in 2023. For the most part, their numbers tracked those of the SFP, but were generally a bit higher. Guttmacher did not report numbers from states where there were legal protections in place for unborn children and doesn’t have the most recent pre- and post-*Dobbs* numbers from those states to offer usable comparisons.

Independently of all those efforts, a group of U.S. economists published a study in the IZA Institute of Labor Economics (IZA Discussion Paper No. 16608, November 2023), looking at births occurring in the first six months of 2023 in those states with abortion policies most directly impacted by *Dobbs*. They claim to have found 32,000 additional births as a result of changing abortion policies in those states.

Even if certain numbers of women traveled to other states for abortions or even had abortion pills shipped to their homes, this would not cause births to increase, clearly indicating these are abortions averted and lives saved.

Calculating a cumulative count

Until the CDC and Guttmacher are able to conduct their own full national surveys or complete their own national counts, the best estimate of annual and cumulative abortions will probably have to involve an amalgam of the best available sources and most reasonable assumptions.

Knowing that the CDC’s 2021 abortion number is too low, missing data from California, New Hampshire, Maryland, and New Jersey, but recognizing that the larger trends it shows are generally sound, we applied the 5% increase the CDC found from 2020 to 2021 and applied it to the most recent published figure from Guttmacher, which was 930,160 for 2020. That gave us 976,668 abortions for 2021.

To arrive at a figure for 2022, we used that 2021 number and subtracted the number of cumulative fewer abortions SFP saw in the U.S. after factoring the drops in states with protections for the unborn against the increases in states allowing or encouraging abortions, including those for women from other states.

Reports from SFP show that with all these factors considered, there were 25,050 fewer abortions from July to December of 2022 than there would have been without *Dobbs* (that is, compared to trends seen in the months before *Dobbs*). This yields a figure of 951,618 for 2022.

UNITED STATES ABORTION NUMBERS

After the unusual jump of 5% the CDC found in 2021, a year dominated by COVID, we assumed that abortion trends continued upwards as before, and adjusted the 2022 by 2.6% (the average yearly increase seen by Guttmacher 2017-2020). This would have given us a figure of 976,360 for 2023.

But we took 64,000 from that figure because of the 32,000 additional births U.S. economists saw in the first six months of 2023 as a result of *Dobbs*, multiplied by two to account for the full year.

This gives an estimate of 912,360 abortions for 2023.

Taken together with numbers developed from previous Guttmacher yearly counts, National Right to Life estimates that there have been 65,464,760 abortions performed in the U.S. since 1973.

Late-breaking estimates from Guttmacher

Just days after National Right to Life issued its report saying available data appeared to show abortions going down in the U.S. since *Dobbs*, the Guttmacher Institute, the former special research affiliate of abortion giant Planned Parenthood, sent out a press release claiming new data shows abortions on the increase.

Guttmacher says fresh monthly counts from selected abortion “providers” indicate that the “Number of Abortions in the United States Likely to Be Higher in 2023 than in 2020”.

The abortion industry is clearly anxious to try to make the case that pro-life policies have not ultimately proven effective. They also want people to believe that it has, by clever legal and logistical maneuvering, been able to beat or blunt the impact of pro-life laws and keep the abortion industry humming.

Their publication of these preliminary numbers is proof that the industry has not been in retreat. But is it evidence of an increase?

Guttmacher weighs in

According to the latest counts Guttmacher developed from clinics reporting to them, there were an estimated 878,200 abortions performed in the U.S. in the first ten months (January-October) of 2023. With that data currently showing an average of about 88,000 a month, Guttmacher projects that the expected year-end total for 2023 will far exceed the 930,160 reported in its latest full survey of 2020. Do the math and you'll get about 1,050,000 for the year.

A different methodology

As we noted earlier, Guttmacher, for the longest time, has been considered to have the most accurate abortion counts, relying on direct surveys of abortion clinics, rather than reports from state health departments, as the CDC does. There is a tendency to assume that same level of accuracy here, but their methods in this most recent study differ from those employed in its full national survey every three years.

While its regular survey attempts to get data from every national abortion “provider,” contacting them multiple times if necessary, the monthly data used here comes from “samples of abortion providers” combined with “historical data” on previous caseloads from earlier surveys to produce overall estimates for known “providers.” The monthly survey sample includes some random “providers” as well as “[F]acilities that play a particularly

important or unique role in provision (e.g., because they border a state with an abortion ban or because they provide a large share of abortions in the state)."

Guttmacher does not directly address the question of whether this method could oversample "providers" who are most likely to pick up out-of-state traffic or referrals after *Dobbs*. This could have the consequence of making the projected average caseload higher than it should be for all the rest of the unsampled clinics. Guttmacher does, however, include broad "uncertainty intervals" for their estimates to show a range in which they think the most accurate estimate lies.

Guttmacher does not seem to be counting abortions from states where full protections for the unborn are in place. But one wonders whether Guttmacher's statistical model could still be assigning full caseloads to clinics in abortion-friendly states that still may have closed or become dormant (as far as abortion goes) under *Dobbs*.

If abortions went up, why?

Though their accuracy at this point is hard to ascertain, Guttmacher's report does raise the possibility that abortion numbers may have continued their **pre-Dobbs** increase **after Dobbs**, despite that momentous decision.

If that did happen, or even if we just want to know why the overturning of *Roe* did not automatically shut down the abortion industry across the board, there are some significant reasons that may have occurred.

Old clinic employees as travel agents

The industry has made no secret of the fact that they invested a great deal of money and effort in setting up an extensive and expensive referral system. This is one where they made arrangements for vulnerable pregnant women from states with legal protections for unborn children to travel to clinics in neighboring or other states with abortion-supportive policies. They may begin running out of money at some point, but early on, private abortion funds were spending tens of millions of dollars paying for or at least supplementing that travel or even helping to cover the costs of the abortion.

This certainly contributed to any "abortion migration" from one state to another, but it also meant a large number of women aborting who might otherwise have stayed in their home state and had their babies. That not only keeps abortions up but may have the consequence of encouraging some women to abort who otherwise had neither the money nor the inclination to do so.

The abortion industry has been preparing for years to handle the higher volume from out-of-state clients, building high-volume mega-clinics just across state lines, and setting up mobile clinics to patrol the boundaries in border states.

Chemical abortions without clinics

Guttmacher also points to the role of chemical abortion, particularly those performed remotely via telemedicine.

When these pills had to be distributed at clinics, they still attracted a large number of women who were looking for an alternative to surgical abortion. But when the courts and the Biden administration were able to push through changes that allowed these to be delivered by mail to women's homes without any in-person visit, this made these dangerous abortions easily available to women who lived far from any brick-and-mortar clinics. That also helped drive abortions up.

UNITED STATES ABORTION NUMBERS

Marketing crisis

Data from both the Society of Family Planning and Guttmacher show that there was a big spike in the number of abortions recorded by the clinics they contacted recorded for March of 2023. This was precisely when there was heavy national media coverage of the case in the North Texas federal district court that challenged the government's approval of the abortion pill mifepristone.

Clearly, fears that the drug was about to be pulled off the market prompted a lot of "panic buying." Though the government largely lost that case, the drug stayed on the market pending a review of that decision by higher courts.

Despite their best efforts, lives saved

The confluence of all these efforts and expenditures by the abortion industry may have been able to keep abortion trending upward in the United States, despite the new legal protections in place for women and children in many states because of *Dobbs*. We'll have to wait and see what the numbers are when more complete data comes out from Guttmacher and the abortion industry.

Regardless of what those final numbers turn out to be, some women clearly traveled and got abortions in other states, and some ordered abortion pills over the Internet. The abortion industry prepared for this and helped make it happen.

But we also know from those statistics cited earlier and from multiple news stories that many women from those states with protections, who would have otherwise visited their (now closed or dormant) neighborhood abortion clinic, decided to stay home and have their babies.

Long-term trends are still on our side. Even with Guttmacher's higher projection for 2023, the number of abortions performed annually in the U.S. would still be down by more than a third from their all-time peak. We don't have any new abortion rates or ratios, but those we saw before *Dobbs* were still lower than they were since the earliest days of *Roe*, even with recent upticks.

Clearly, though, abortion advocates are retrenching.

Expect them to continue trying to scare women into buying dangerous pills online and keep shipping women to other states. It isn't clear what they'll do when they run out of free travel money or if the Supreme Court (or the exposure of a bad safety record) stops the mailing of abortion pills.

The numbers show us the fight is far from over and there is still much work to be done. Expect a lot of energy, effort, and expense on both sides.

Ultimately, we have to believe that the battle will be won not by the ones who have the most money or the most influence with the media, but by those who demonstrate with word and deed their love for both mother and child.

They're the ones who really count most of all.

THE BASICS

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

Diary of an Unborn Baby



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

Day 6 The embryo begins implanting in the uterus.

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

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



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

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

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



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

Week 11 Baby can grasp object placed in hand³.

Week 17 Baby can have dream (REM) sleep⁷.

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

MORE THAN NUMBERS

More than 65 million unborn babies have been aborted in the U.S. since 1973.

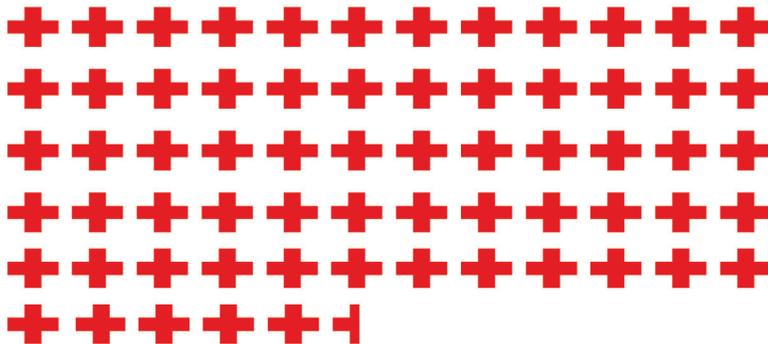
There were over 930,000 unborn babies aborted in 2020. That's over 2,500 abortions per day, 106 per hour, 1 every 34 seconds.

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:



FEDERAL POLICY AND ABORTION: A SYNOPSIS



Overview

Federal Law and Abortion

From 1972 until 2022, the basic legal framework governing the legality of abortion and the legal status of unborn human beings had been “federalized” primarily by decisions of the United States Supreme Court, rather than by acts of Congress.

In the five decades between when the U.S. Supreme Court handed down *Roe v. Wade* and *Doe v. Bolton* in 1973 until the 2022 *Dobbs v. Jackson* decision, there had been many proposals in Congress to overtly challenge or overturn the *Roe* doctrine by statute or constitutional amendment. Conversely, there have been efforts to ratify and reinforce the *Roe* doctrine by federal statute, but neither approach has ever been enacted into law.

Despite 50 years of court-imposed restraint, Congress has played an important role in shaping abortion-related public policies. Congress has enacted pro-life 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 and a half million lives. On the other hand, 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.

On June 24, 2022, the U.S. Supreme Court ruled that *Roe v. Wade* was incorrectly decided, that there is no right to abortion in the U.S. Constitution. They also determined, in *Dobbs v. Jackson Women’s Health Organization*, that abortion-related policies (including protections for preborn children and their mothers) should be enacted by elected representatives, not dictated by the courts.

Currently, most pro-life laws and policies are being enacted at the state level. However, the federal government, from the executive branch to the U.S. Congress, is uniquely positioned, and has both the opportunity and the responsibility to protect the most vulnerable members of the human family.

Partial-Birth 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.

Born-Alive Infants and Abortion

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.

Unborn Victims of Violence

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

Other Federal Policies

Pro-abortion advocacy groups have intensified efforts to enshrine “abortion rights” in statute (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 signed into law. A further description is available on page 19.

FEDERAL POLICY AND ABORTION

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 (HHS) appropriations bill. A fuller explanation of the Hyde Amendment can be found starting on page 21. However, as discussed below, the Obamacare health law enacted in 2010 contains provisions that sharply depart from the Hyde Amendment principles, primarily by authorizing federal subsidies for the purchase of private health plans that cover abortion on demand.

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

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. The pro-life side had successfully 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](#))

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.”

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 were 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*.

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

FEDERAL POLICY AND ABORTION

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.

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 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 in 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, receives well over \$670.4 million through federal, state, and local government grants and contracts.

The Federal Medicaid program is the largest source of these funds. 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 has passed the U.S. Senate.

International Abortion Funding

There are also numerous policy issues related to foreign aid and abortion. One policy at issue was originally announced by the Reagan Administration in 1984 at an international population conference in Mexico City, and therefore, until now, it has been officially known as the Mexico City Policy. That policy required that, in order to be eligible for certain types of foreign aid, a private organization must sign a contract promising not

to perform abortions (except to save the mother's life or in cases of rape or incest), not to lobby to change the abortion laws of host countries, and not to otherwise "actively promote abortion as a method of family planning." The Mexico City Policy has been adopted by each Republican president since, and rescinded by each Democrat president.

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

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

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. 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).

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.

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

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

In 2013, alarmed by the enactment of pro-life legislation in numerous states, leading pro-abortion advocacy

groups again unveiled a proposed federal statute that would invalidate virtually all federal and state limitations on abortion, including various types of laws that have been explicitly upheld as constitutionally permissible by the U.S. Supreme Court. This updated FOCA is formally styled the “Women’s Health Protection Act,” although National Right to Life noted that it would accurately be labeled the “Abortion Without Limits Until Birth Act.”

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.

National Right to Life Priorities in the 118th Congress and Beyond

Given the current composition of Congress, a national law protecting preborn children and their mothers from the tragedy of abortion is not likely to happen in the foreseeable future. But there are still many life-affirming policies that can be enacted at the federal level that will reduce the number of abortions, help mothers, and save lives. Therefore, National Right to Life is urging all lawmakers to embrace the unique and transformative role the federal government has in advancing life-affirming policies in the United States.

This includes:

- Ensuring that no taxpayer dollars are used to pay for abortion or subsidize health plans that cover or promote abortion, either in the U.S. or in other countries, and eliminating to the extent possible taxpayer funding of abortion providers.
- Recognizing the role of parents to be involved before their minor daughter could get an abortion.
- Connecting mothers of newborn and preborn children to resources.
- Protecting the lives of babies born alive following an attempted abortion.
- Seeking protective protocols on chemical abortions to reduce the risk of death and injury to the mother.
- Promoting educational initiatives (and existing right-to-know laws) to provide vital information about fetal development and the physical, mental, and emotional dangers of elective abortion.
- Requiring the U.S. Centers for Disease Control and Prevention (CDC) to collect meaningful data and publish reports on abortion in all 50 states and the District of Columbia, (e.g., the number of abortions performed, the age of the mother and preborn child, complications and deaths arising from such procedures).
- Protecting the conscience rights of health care personnel and entities who do not wish to perform or participate in any part of the abortion process.
- Confirming only federal judges and justices who will interpret the Constitution fairly and honestly according to its text and history.



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.

National Right to Life is engaged in ongoing efforts to retain the longstanding pro-life appropriations amendments, including the Hyde Amendment, in this year's appropriations.

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 taxpayer funded abortion.

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 reasons¹. 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.”

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.

1. 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>

The federal prohibition against DOD funding elective abortion clearly extends to funding for 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.²

These actions are each an affront to the longstanding provisions of law prohibiting taxpayer-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.³

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,⁴ and the number was escalating rapidly.⁵ If a woman or girl was Medicaid-eligible and wanted an abortion, then abortion was deemed to be “medically necessary” and federally reimbursable.⁶ 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.⁷

That is why it was necessary for pro-life Congressman Henry Hyde (R-Ill.) 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*.

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

3. 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/>)

4. 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 . . .”

5. 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.

6. 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)]

7. 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.”

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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 LHHHS 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.⁸

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 part⁹:

Sec. 506. (a) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for any abortion. (b) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for health benefits coverage that includes coverage of abortion. (c) The term "health benefits coverage" means the package of services covered by a managed care provider or that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

8. "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).

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

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.

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 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.¹⁰

10. 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.

THE HYDE AMENDMENT

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.¹¹

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.

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

WOMEN DESERVE TO KNOW

there is a possibility of saving their child by the abortion pill reversal protocol.



Medication abortion is a multi-step process that involves two drugs. **Mifepristone** blocks progesterone's effects, which prevents nutrients from being provided to the baby.

Within 24 to 48 hours after taking mifepristone, a woman can possibly reverse the intended effects before taking the second drug, **misoprostol**.

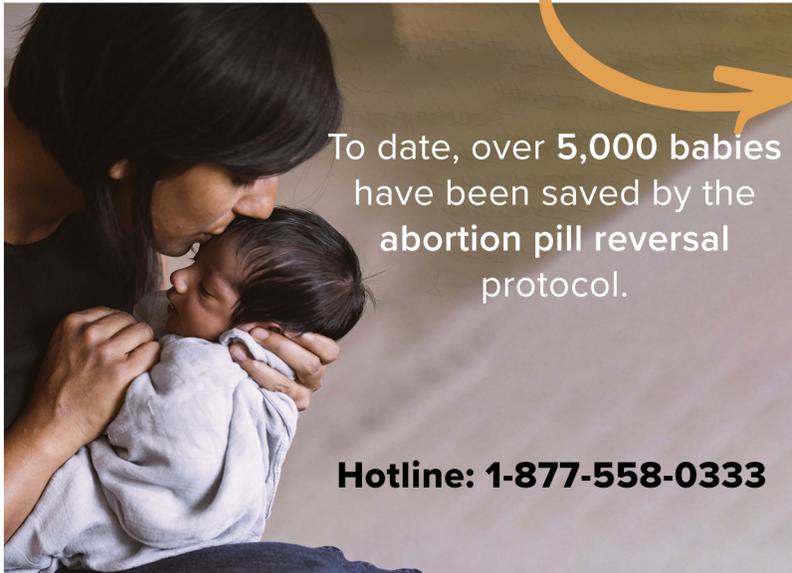
The abortion pill reversal hotline has received thousands of calls from women who changed their minds after taking the first drug, mifepristone.

HOW IT WORKS



Planned Parenthood Action @PPact · Aug 8, 2017
Don't EVER let this phrase fool you: "Abortion reversal" is a flat-out false & dangerous myth.

REALLY? TELL THAT TO THESE MOTHERS



To date, over **5,000** babies have been saved by the abortion pill reversal protocol.

Hotline: 1-877-558-0333

The fear I had of being pregnant overcame all other emotions, and I took the pill. On the drive home I was consumed with guilt and regret. I cried the whole way home... I started looking online... and came across a website discussing a reversal process, and it had a phone number. I was filled with hope, but also doubt that it was real or attainable. Once I called the number, I came in contact with the hotline nurse... the next morning I was scheduled to go to the San Juan Diego Center... a worker called me and made sure I was coming, she even asked if I needed a ride. I took her call as a sign that I was doing the right thing. -Emily

Not following through with the abortion pill has been a tremendous blessing. My little girl is the joy of my life and I truly don't know what I would do without her. I am so thankful God placed people in my path who were able to make sure my little angel had a chance at life. -Cachet

When I went home I immediately went online hoping that there'd be something that could be done. Thankfully, I found the abortion pill reversal website and a nurse answered and she was so kind and willing to help... I have been given a second chance and I know that God showed His mercy on me and gifted me this precious little girl. -Maria

Testimonies from abortionpillreversal.com

 **National
RIGHT TO LIFE**
Educational Trust Fund

1446 Duke St | Alexandria, VA | 22314 | www.nrlc.org

STATE LAWS & ABORTION



“Unborn babies are a source of profound joy for those who view them. Expectant parents eagerly share ultrasound photos with loved ones. Friends and family cheer at the sight of an unborn child. Doctors delight in working with their unborn patients—and experience an aesthetic injury when they are aborted.”

- Judge James Ho,

United States Court of Appeals for the Fifth Circuit, in Alliance Hippocratic Medicine v. FDA (August 16, 2023)

Synopsis of State Laws

The following pages provide a summary of state laws highlighting key legislation enacted by National Right to Life Committee’s (NRLC’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 <https://www.nrlc.org/statelegislation/>.

In 2023—the first full year post-*Dobbs*—there were pro-life victories and disappointing anti-life setbacks in state legislatures across the country. Pro-life legislators and activists pursued many protections for unborn children and their mothers, but our challenges were great, including the passage of radical pro-abortion amendments to state constitutions. As NRLC President Carol Tobias said, 2023 was like “drinking from a firehose.” This coming year may bring more of the same.

National Right to Life and our network of state affiliates worked closely with lawmakers to enact upwards of 60 bills that protect mothers and children in over a dozen states. The positive working relationships our affiliates have with lawmakers always yield compassionate and purposeful protections and assistance for mothers, unborn children, and families in need.

Pro-life laws were enacted that protect unborn children throughout gestation or once there is a presence of a heartbeat; prevent the trafficking of a minor to obtain an abortion; prohibit chemical abortions or prohibit them via telemedicine; restrict dismemberment abortions; and enact the Born-Alive Infants Protection Act. There were laws enacted allowing women to know about the possibility of abortion pill reversal (APR); funding of state abortion alternatives programs and pregnancy resource centers; laws expanding postpartum benefits for women and expanding the use of safe haven

“baby boxes,” and providing tax credits for adopting a child or for supporting a pregnancy resource center. Other life-affirming laws included allowing abortions to only be performed in hospitals, tax breaks on baby needs and other assistance to pregnant mothers during and post-pregnancy.

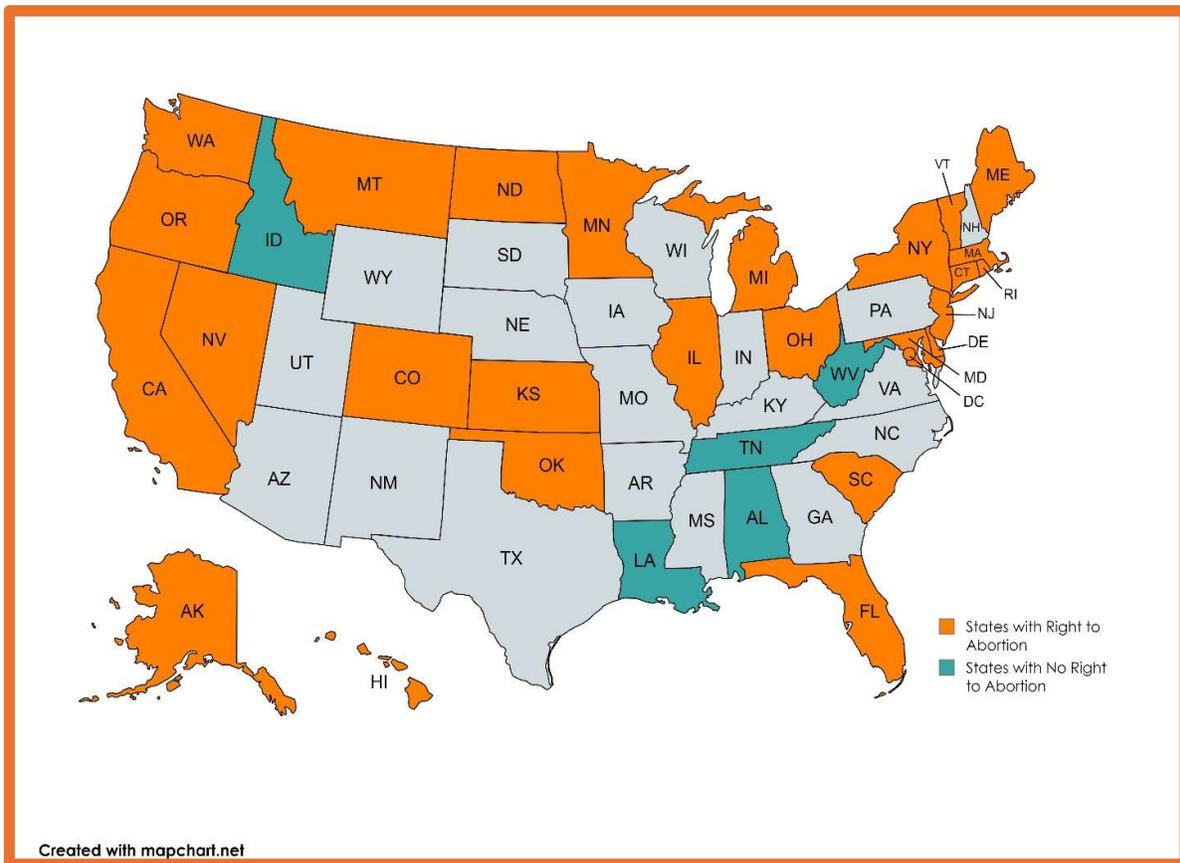
Perseverance in the Face of Trials

The year 2023 was challenging for the pro-life cause: pro-abortionists, backed by big money and a media that regurgitates their misleading words verbatim, enshrined unlimited abortion-on-demand into various state constitutions using intentionally vague language to “protect” an unfettered right to terminate life. As a result, some state pro-life protections have been repealed and enacting future pro-life legislation is in jeopardy. Abortion advocates have been rabid in pushing easy access to dangerous chemical abortion pills, which brutally end the life of a child and subject a woman to physical, mental, and emotional trauma while experiencing a painful and drawn-out abortion alone.

Pro-lifers know that we will continue to face trials in our fight for mothers and their unborn children—we have faced obstacles for over 50 years of fighting for life. But we know that these trials yield perseverance, and perseverance yields results.

For more information and updates on the following laws and maps, please visit the [National Right to Life State Legislation Center](#).

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



The state constitutions in 5 (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.

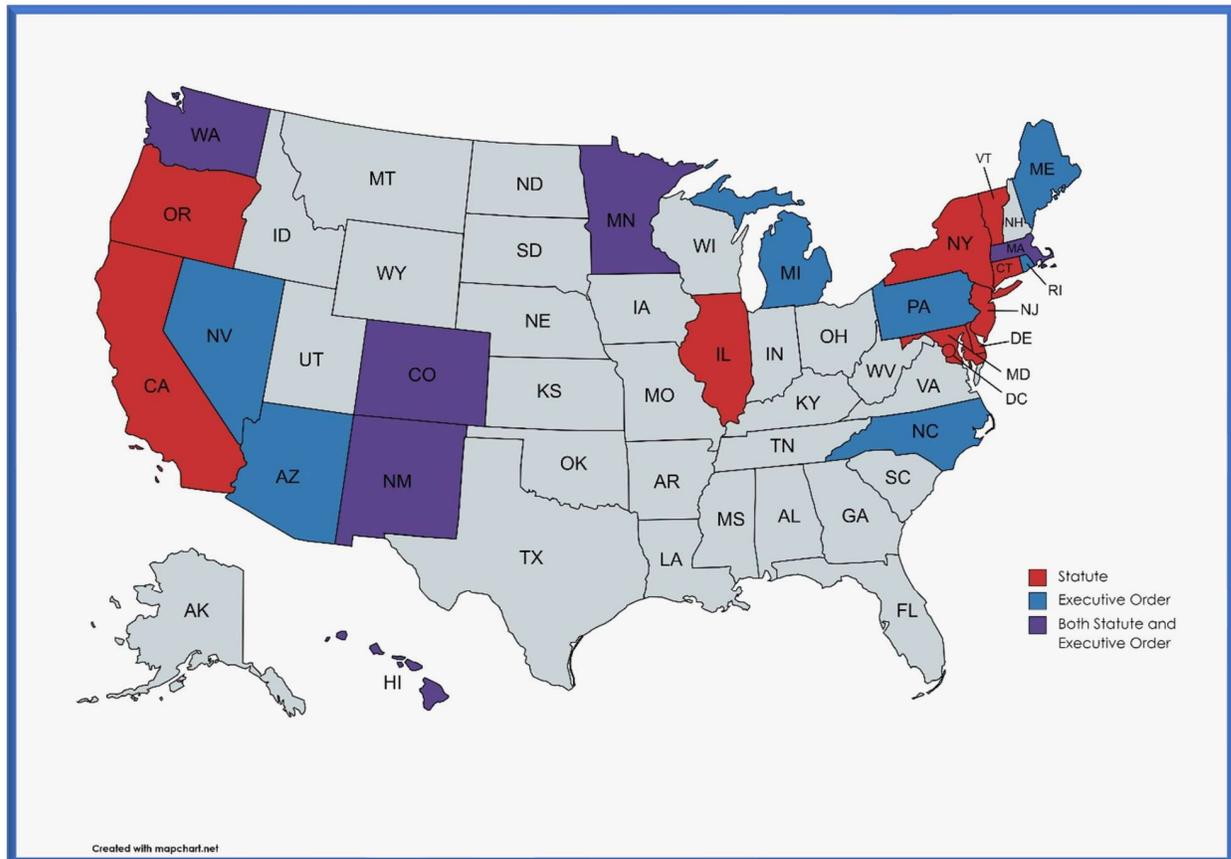
A total of 26 states and the District of Columbia have guaranteed a right to abortion by either a court decision, constitutional amendment or state legislative statute: Alaska (court decision), California (constitutional amendment and statute), Colorado (statute), Connecticut (statute), Delaware (statute), District of Columbia (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), North Dakota** (court decision), Ohio (constitutional amendment), Oklahoma*** (court decision), 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.

**In 2023, the North Dakota Supreme Court, in declining to vacate a preliminary injunction on the state's trigger law, held that the state constitution provides a fundamental right to an abortion when necessary to preserve the life or health of a mother.

***In 2023, the Supreme Court of Oklahoma held that "the Oklahoma Constitution creates an inherent right of a pregnant woman to terminate a pregnancy when necessary to preserve her life."

State Laws and Executive Orders Insulating Abortionists From Lawsuits (“Shield Laws”)

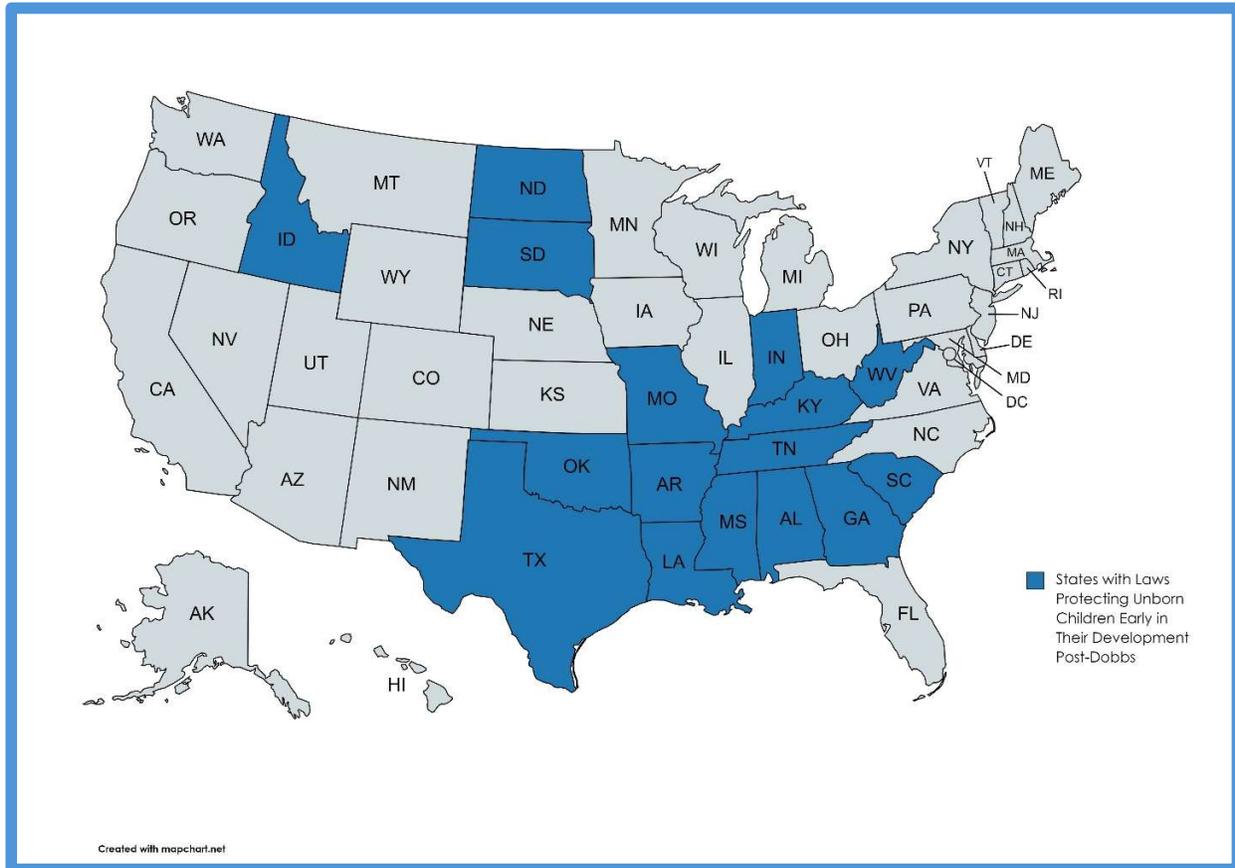


Immediately after the United States Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, some legislatures moved to enact laws, and some governors issued executive orders, that would insulate abortionists by preventing any state government or law enforcement entity from participating in an out-of-state investigation of the abortionist. These laws and orders are dangerous, and they provide cover for bad actors similar to notorious abortionist Kermit Gosnell or people who commit the crime of human trafficking.

The following 22 states and the District of Columbia have enacted laws, or a governor has issued an executive order, or both, insulating abortionists from investigations: Arizona, California, Connecticut, Colorado, Delaware, District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington.

STATE LAWS AND ABORTION

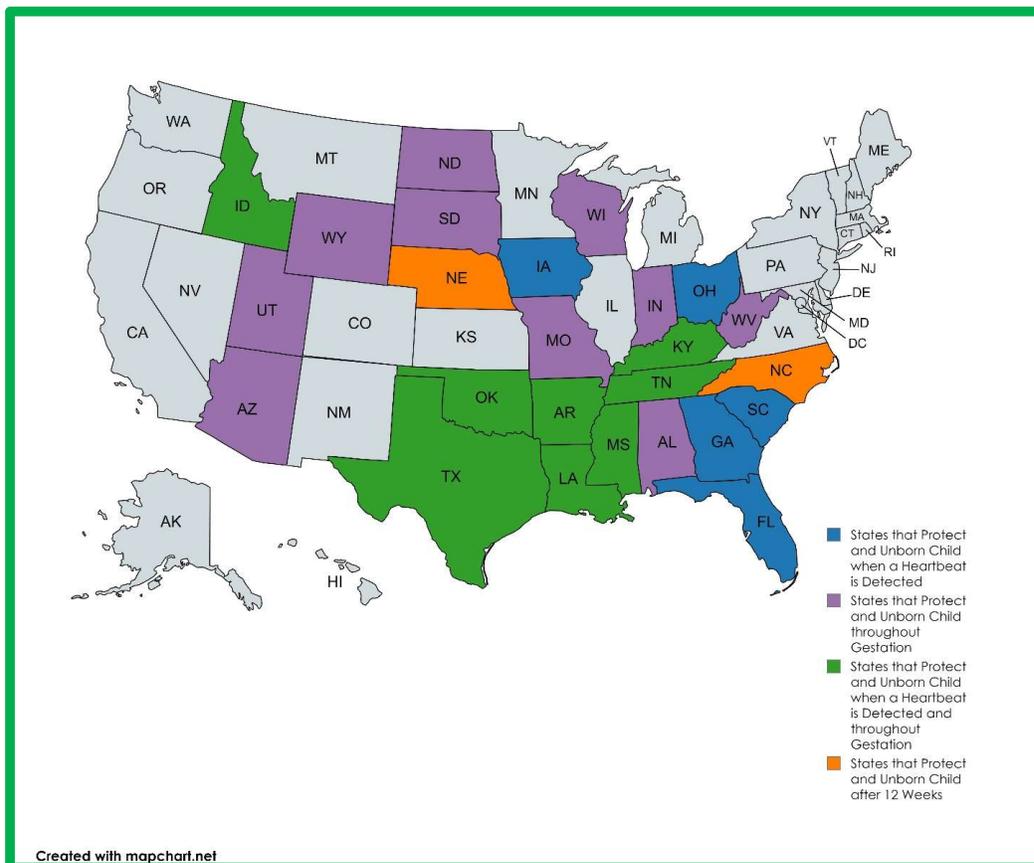
Laws Protecting Unborn Children Post-*Dobbs*



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

Currently sixteen (16) states protect the unborn child either throughout gestation or once a heartbeat has been detected: Alabama, Arkansas, Georgia, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, West Virginia.

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 enacted laws protecting unborn children from abortion after the unborn child's heartbeat is detected. A total of five (5) states: **Florida***, **Georgia**, **Iowa***, **Ohio***, and **South Carolina** have laws protecting the unborn child once a heartbeat is detected.

Ten (10) states have enacted laws protecting unborn children throughout gestation: **Alabama**, **Arizona***, **Indiana**, **Missouri**, **North Dakota**, **South Dakota**, **Utah***, **West Virginia**, **Wisconsin***, and **Wyoming***.

Eight (8) states have laws that both protect the unborn when their heartbeat can be detected, and throughout gestation: **Arkansas****, **Idaho**, **Kentucky**, **Louisiana**, **Mississippi**, **Oklahoma****, **Tennessee**, and **Texas**.

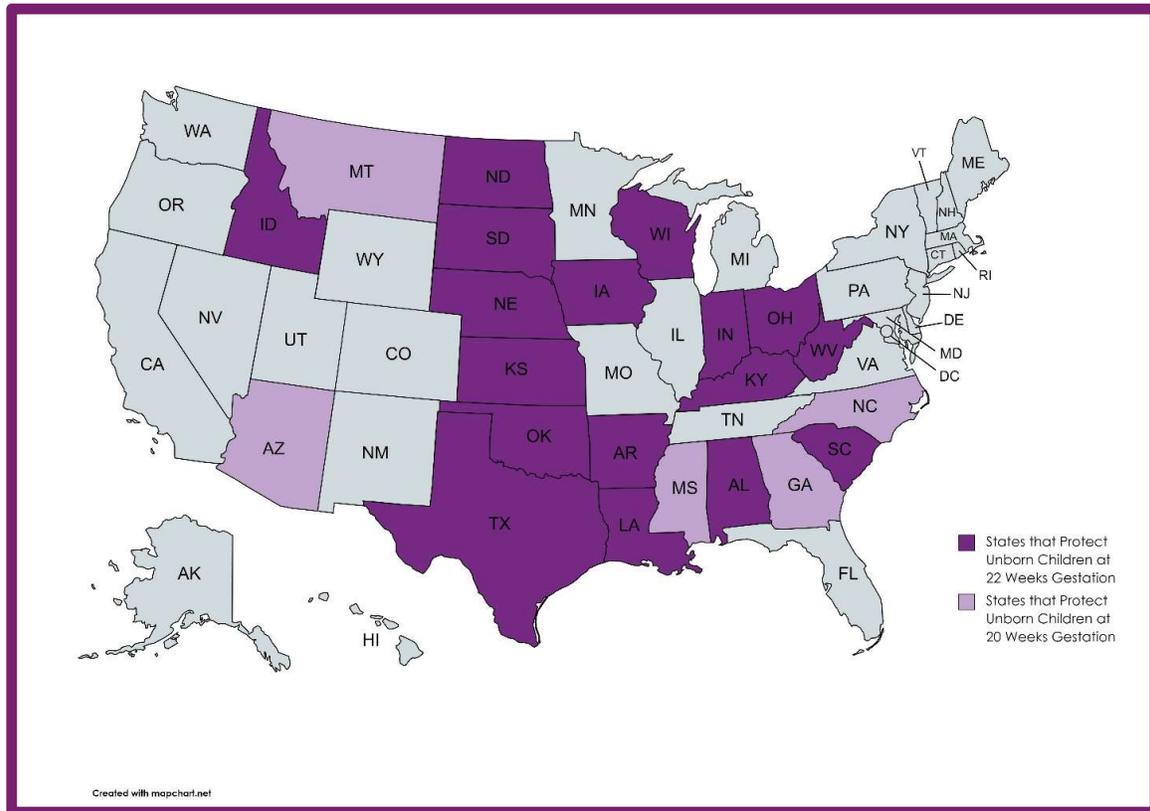
Two (2) states have laws that protect the unborn child after 12 weeks: **Nebraska** and **North Carolina**.

*Laws not in effect due to litigation.

** The heartbeat laws are not in effect in these states but the laws protecting the unborn child throughout gestation remain in effect.

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

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. In 2010, 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.

Seventeen (17) states have enacted 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):

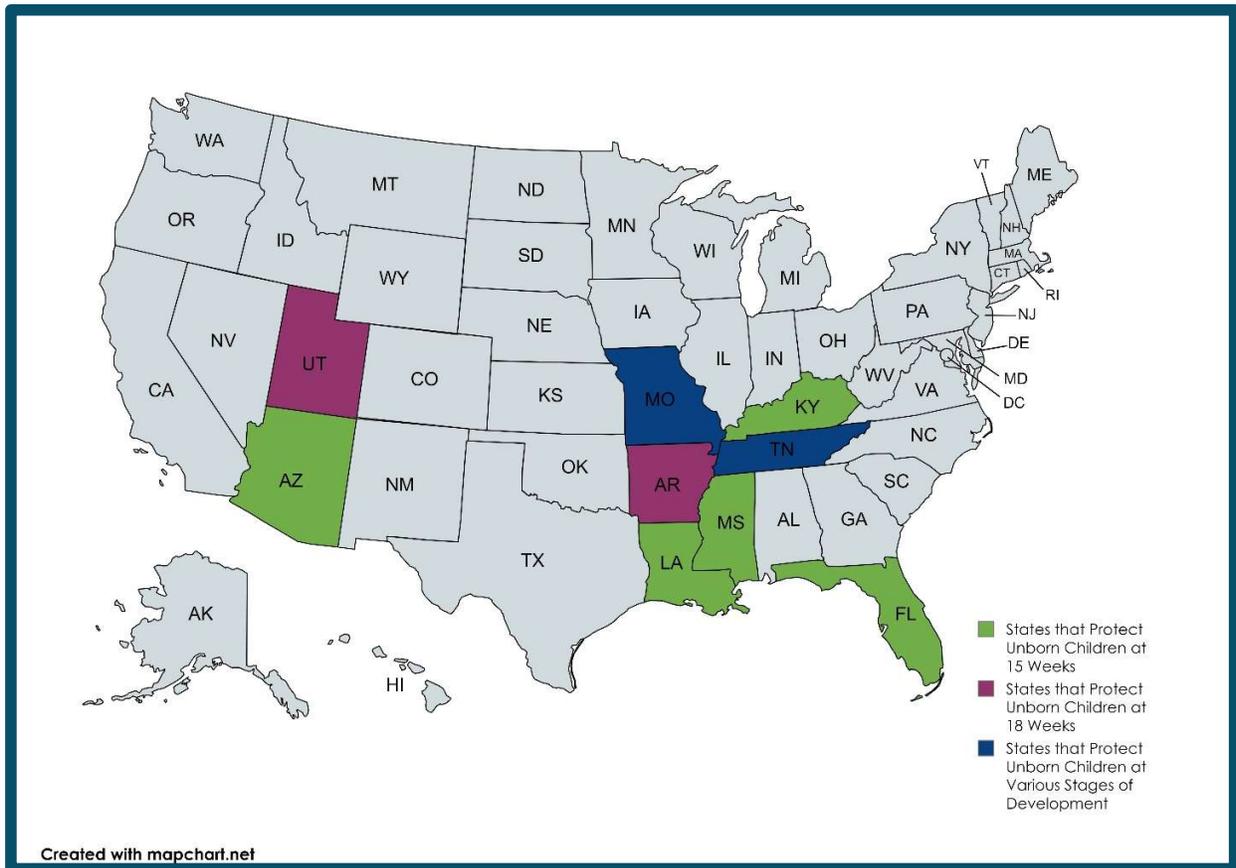
Alabama, Arkansas, Idaho*, Indiana, Iowa, Kansas, Kentucky, Louisiana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, West Virginia^, and Wisconsin.

Five (5) states have enacted pain-capable laws protecting babies at 20 weeks gestation: Arizona*, Georgia*, Mississippi, Montana*, and North Carolina.

*These laws have been challenged in court. Arizona’s law is permanently enjoined. Georgia’s law is now in effect. Idaho’s law was declared unconstitutional and is enjoined. Montana’s law is enjoined and is not in effect.

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

Laws that Protect Unborn Children at Certain Gestational Ages (18 Weeks, 15 Weeks, and Cascading Week Protections)



The advancement of science has demonstrated that the structures responsible for pain show signs of sufficient maturation by at least 15 weeks of gestation.

Because of these advancements in our understanding of the pain capability of the unborn child:

Five (5) states protect the unborn at 15 weeks: **Arizona, Florida, Kentucky, Louisiana, and Mississippi.**

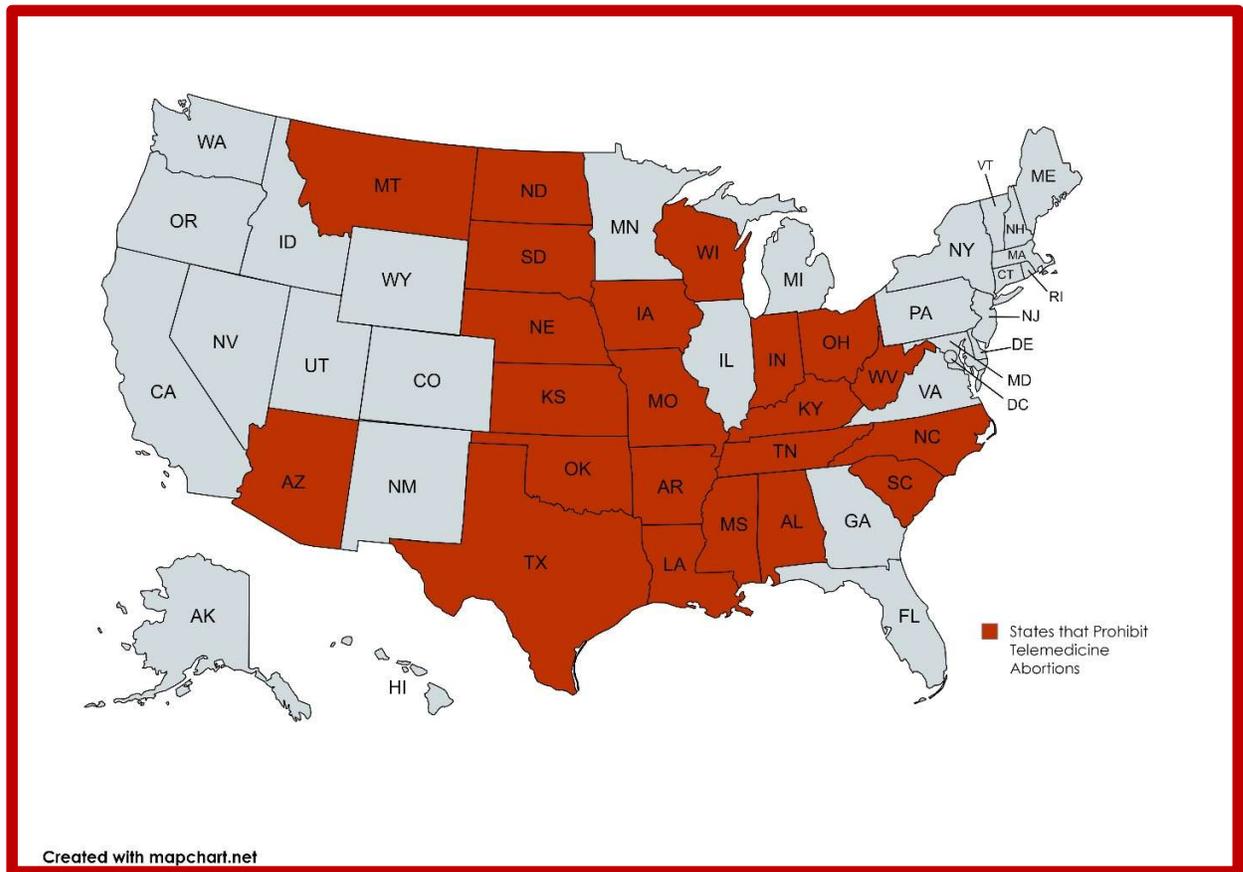
Two (2) states protect the unborn at 18 weeks: **Arkansas and Utah.**

Two (2) states protect the unborn at various stages of development (cascading laws): **Missouri¹ and Tennessee²**

1 In Missouri, the law would protect unborn children starting at 8, 14, 18, and 20 weeks, except in case of a medical emergency.

2 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.

Telemedicine Abortion Prohibitions



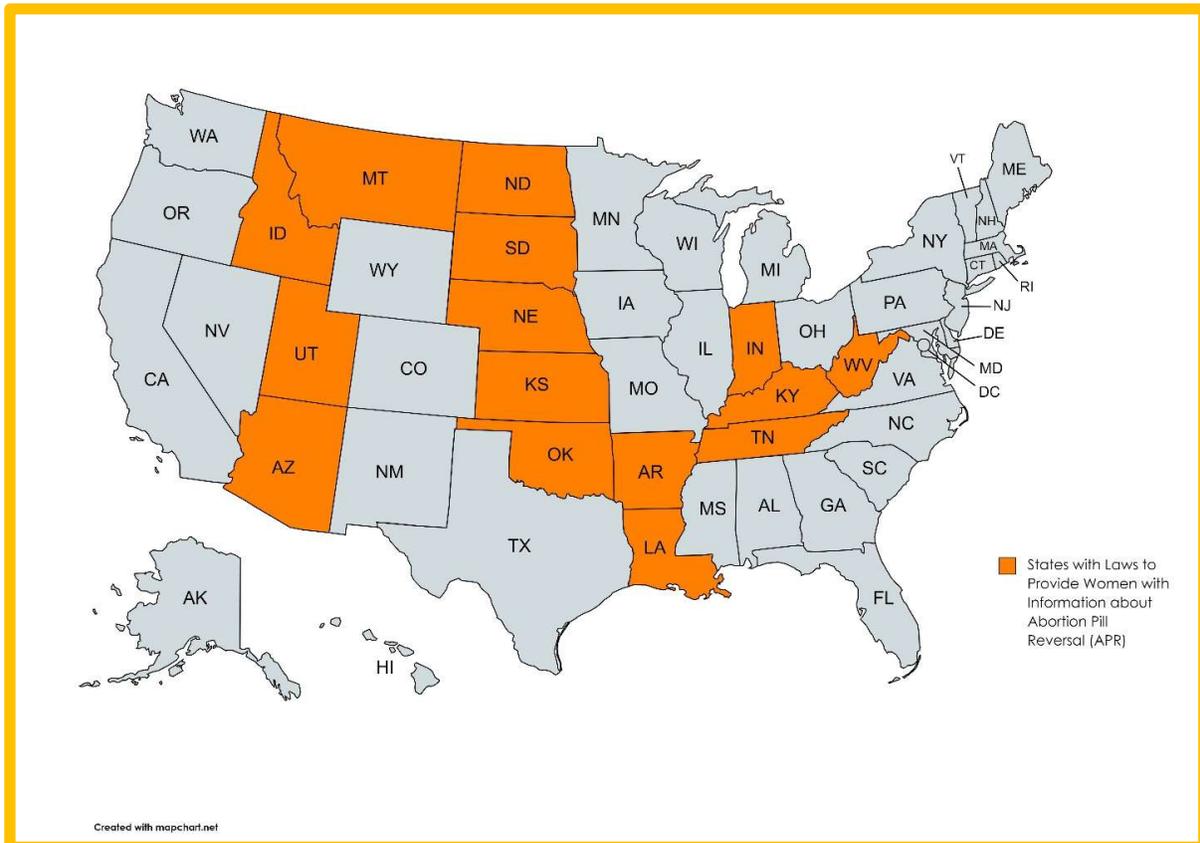
Telemedicine abortions are chemical abortions done via a video conferencing system where the abortionist is in one location and talks with a woman, who is in another location, over a computer video screen. The abortionist never sees the woman in person because they are never actually in the same room.

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 laws 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, Montana, and Ohio laws are currently enjoined.

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



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

Currently, this protocol has saved over 5,000 babies.

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

Currently fifteen (15) states have enacted laws requiring this information to be provided: Arizona, Arkansas, Idaho, Indiana, Kansas, Kentucky, Louisiana, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Tennessee, Utah, and West Virginia*.

*The West Virginia law was rendered ineffective by the W.V. Legislature with the passage of the Unborn Child Protection Act, W. Va. Code § 16-2R-1 et seq.

Abortion Pill Rescue

To date, over 5,000 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. Once the first abortifacient drug (mifepristone or RU-486) is taken, it blocks the pregnancy hormone progesterone and begins to shut down the baby's life support system.



The second drug, misoprostol, is taken 24-48 hours later, 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 pro-life physician immediately for information

about the potential of reversing the effects of the abortion pill, or **call the Abortion Pill Rescue 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 who have undergone the reversal process using progesterone have been able to deliver healthy babies.

To date over 5,000 babies have been born following use of the Abortion Pill Reversal protocol. Currently, there are over 1,400 medical professionals, clinics, and hospitals that are offering the APR protocol.

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, long-term 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 2024, the ERA-revival movement will continue to rely heavily on strongly sympathetic and often willfully gullible news media to promote the claim that the ERA is on the verge of becoming part of the Constitution, and that any lawmaker or judge who resists the scheme is an enemy of "equality."

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 demolished, with far-reaching ramifications for possible future revisions to the text of the Constitution.

ERA revivalists, including President Biden, have urged that Congress adopt a joint resolution purporting to retroactively "remove" a ratification deadline, despite the multiple constitutional impediments to any such exercise in legislative time travel. Such a measure failed in the U.S. Senate in April 2023 and has no prospect of success in the House of Representatives during 2024. Nevertheless, nearly every Democrat in Congress has endorsed the concept. Some have gone further, demanding that the Archivist of the United States certify the ERA without waiting for congressional action, or that the President order her to do so.

Far from eliciting media outcries about attacks on the rule of law or the constitutional order, during 2021-2023 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, ABC News, and National Public Radio. In most cases, these promotional treatments have given short shrift to the actions of the federal courts regarding the status of the ERA, or even have ignored the court decisions altogether.

The tension between objective requirements for amending the Constitution and political gamesmanship are illustrated by the fact that President Biden has endorsed the unsuccessful congressional proposals to proclaim the ERA as having been ratified, even though his Justice Department has recognized in federal court that the ERA has not been ratified—a position affirmed in a 42-year unbroken string of federal court decisions.

Federal Courts Stand Fast Against ERA Deadline Denialism

The ERA Resolution submitted to the states by Congress on March 22, 1972, contained a seven-year ratification deadline. The deadline expired on March 22, 1979 with the ERA short of the 38 states required for ratification. There is no judicial authority to support any claim that the ERA continued to exist as a viable proposal after that date. Nevertheless, since winning adoption of ostensible “ratification” resolutions from the legislatures of Nevada (2017), Illinois (2018), and Virginia (2020), ERA revivalists have asserted that the ERA is already part of the Constitution—or at least, that it will become part of the Constitution if so declared by the Archivist of the United States, or by the Congress, or both.

So far, the constitutional rule of law has prevailed. The federal courts have remained uniformly unreceptive, over a 42-year period, to the legal claims advanced by the ERA revivalists. As the *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.)

The most recent major judicial blow to ERA deadline-denialism occurred on February 28, 2023, when a unanimous three-judge panel of the U.S. Court of Appeals for the District of Columbia rejected a lawsuit by the attorneys general of Illinois and Nevada. Those two states had asked that the court order the Archivist of the United States to certify (“publish”) the ERA as part of the Constitution. The appeals panel ruling was written by Judge Robert Wilkins, appointed by President Obama; he was joined by Judge Michelle Childs, appointed by President Biden, and Neimo Rao, appointed by President Trump.

Douglas Johnson, a researcher who has covered the ERA ratification process since 1983, wrote in January 2024: “Since 1982, 30 federal judges have had an opportunity to vote to validate or advance some element of the ERA-revivalists’ legal claims, but the ERA-revival litigants have yet to win a single vote, from a single judge, on a single component in their hodge-podge array of novel legal claims. These 30 judges have been equally divided as to the political parties of the presidents who selected them. From 2021 through 2023, the federal judges who ruled against ERA-revival legal claims were appointed by Democratic presidents by a 10 to 2 ratio. ERA revivalism at this point is best recognized not as a serious constitutional theory or set of theories, but as an extended exercise in political theater, sustained mainly by a cooperative news media, and by principle-free political opportunism among many office holders and office seekers.”

[An article by Mr. Johnson, [“Federal Judges Scorn ERA Revival Legal Claims,”](#) detailing the various federal court cases dealing with the status of the ERA, from 1982 through 2023, may be downloaded from the NRLC website.]

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 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 and ongoing)
- The Campaign Against the Archivists (2019 and ongoing)
- Overt Attacks on Article V and on the Role of the Judiciary
- ERA Revivalism in Congress: Legislative Failures and the “Messaging Exercise”
- Doublethink by Democrats on Rescissions
- How Support for the Equal Rights Amendment in the U.S. House of Representatives Has Plunged Over a 50-Year Period
- The ERA-Abortion Connection: The Mask Comes Off
- NRLC Letter to the U.S. Senate (April 24, 2024)
- Additional Resources

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

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.

becomes part of the Constitution. In 1921, a unanimous Supreme Court held that Congress has the power to include a deadline for ratification.

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.”

PROPOSED AMENDMENT
TO THE
CONSTITUTION OF THE UNITED STATES
SECOND SESSION, NINETY-SECOND CONGRESS

JOINT RESOLUTION
Proposing an amendment to the Constitution of the United States relative to equal rights for men and women. [H. J. Res. 208]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

“ARTICLE —
“SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.
“Sec. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.
“Sec. 3. This amendment shall take effect two years after the date of ratification.”

CARL ALBERT
Speaker of the House of Representatives.
ALLEN J. ELLENDER
President of the Senate pro Tempore.

I certify that this Joint Resolution originated in the House of Representatives.

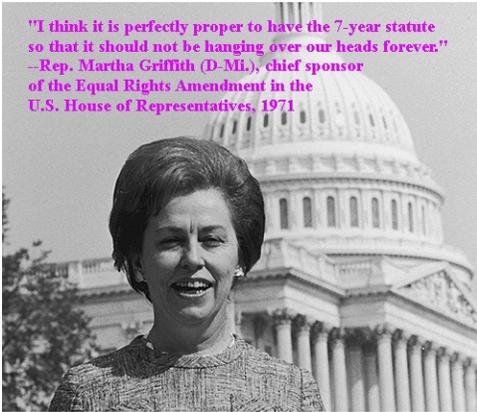
PROPOSED AMENDMENT TO THE CONSTITUTION [86 STAT.]

[Received by the Office of the Federal Register, National Archives and Records Service, General Services Administration, March 23, 1972.]

LEGISLATIVE HISTORY:

HOUSE REPORT No. 92-359 (Comm. on the Judiciary).
SENATE REPORT No. 92-689, also accompanying S. J. Res. 8 and S. J. Res. 9 (Comm. on the Judiciary).

CONGRESSIONAL RECORDS:
Vol. 117 (1971): Aug. 6, S. J. Res. 150 considered in Senate.
Oct. 6, 12, H. J. Res. 208 considered and passed House.
Vol. 118 (1972): Mar. 15, 17, 20-22, considered and passed Senate.



"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

The chief sponsor of the ERA in the U.S. House of Representatives, Rep. Martha Griffith (D-Mi.), [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."

Placement of the Deadline

The ERA's ratification deadline was placed in the opening section of the ERA Resolution, the Proposing Clause. The Proposing Clause is not a mere "preamble," but a constitutionally required element of every constitutional amendment submission, which instructs the states on what method of ratification to employ.

A unanimous three-judge panel of the U.S. Court of Appeals for the District of Columbia, in a February 28, 2023 ruling rejecting the claim that the Archivist must publish the ERA, gave no credence whatever to the ERA-revivalist claim that the placement of the deadline in the Proposing Clause rendered it non-binding. The panel noted dryly that "[I]f that were the case, then the specification of the mode of ratification in every amendment in our nation's history would also be inoperative." (page 25)

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

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

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

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

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

The Unconstitutional and Failed "Deadline Extension"

As the ERA's March 22, 1979 ratification deadline approached, the ERA was three states short of the required 38 state ratifications—and four of the states that had ratified during an initial rush had rescinded their ratifications.

Under pressure from pro-ERA groups, in 1978 Congress passed a joint 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, even those that had promoted the "extension" 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.

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

THE EQUAL RIGHTS AMENDMENT

The Failed Attempt by Congressional Democrats to Start Over

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.

A House Judiciary subcommittee held five hearings on a new ERA resolution (H.J. Res. 1) (containing exactly the same language as the 1972 proposal), after which the full Judiciary Committee voted to reject all proposed amendments and sent the start-over ERA to the full House. Democratic leaders and pro-ERA groups were stunned when the ERA went down to defeat on the House floor on November 15, 1983, in large part because of opposition from National Right to Life and other pro-life groups. The measure received the support of 65% of the voting House members—short of the two-thirds margin required under Article V.



The Baltimore Sun
November 16, 1983

[Associated Press
dispatch]

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

House falls six votes short of bringing back the ERA

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

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

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

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

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

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

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

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

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

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

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

Mr. Sensenbrenner also planned to offer an amendment that would have prevented use of the ERA to draft women and send them into combat. Mr. O'Neill said without the no-amendment rule, the anti-abortion forces likely would have won.

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

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

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

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

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

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

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

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

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

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

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

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

POST-DISPATCH

MONDAY, OCTOBER 4, 1982

Supreme Court Declares ERA Issues Legally Dead

WASHINGTON (UPI) — The Supreme Court today closed the coffin lid on the 16-year-old Equal Rights Amendment. The court declared the amendment legally dead and refused to rule on questions raised about the ratification process.

The justices dismissed a case over a federal court ruling that upheld Idaho's revocation of its earlier approval of the ERA. They declared the issues "moot" — no

longer presenting a live controversy.

The court had temporarily blocked the ruling in January. Today, it wiped the decision off the books so that it could not serve as a precedent.

The amendment was adopted by Congress in March 1972. It officially died on June 30, when the amendment gained approval of only 35 states. This was 3 states

See COURT, Page 8

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.”

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 or she publishes the amendment in the *Federal Register*, which is a formal notification that the text of the U.S. Constitution has been revised.

A rather inconsequential amendment proposal now called the Congressional Pay Amendment (CPA) was originally submitted to the states by Congress in 1789, but failed to achieve ratification. However, the proposal contained no deadline. In the late 1980s, it became the subject of a successful campaign to promote ratification, and 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 properly 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 27th Amendment to the Constitution. Subsequently, OLC issued a longer opinion 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. Subsequently, each house of Congress approved a separate joint resolution expressing the opinion that the ERA had been ratified, but neither resolution passed both houses, so Congress as a branch of government never expressed an opinion on the matter (yet some ERA revivalists have falsely claimed that Congress acted to affirm the ratification of the Congressional Pay Amendment).

(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 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 not certifying the ERA.)

THE EQUAL RIGHTS AMENDMENT

The "Three-State Strategy" Meets Constitutional Reality

The odd history of the CPA has little real legal 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 ERA 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.

The Sacramento Bee • Sunday, December 12, 1993

9 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 "has 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.

Based on this mishmash of constitutional novelties, beginning in 1994, "ratification" resolutions were proposed repeatedly in legislatures among 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 Resolution contained a deadline.

Moreover, the question of the validity of *rescissions* was implicated with respect to the ERA. Therefore, Ferriero properly sought authoritative guidance from the Justice Department Office of Legal Counsel.

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."

VIRGINIA

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 its deadline expired decades ago, throwing a barrier in the path of activists who want the amendment enacted if Virginia's new, majority Democratic legislature approves it.

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

"We conclude 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 a constitutional 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.

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

"The narrative that the ERA is on the verge of ratification is pure political theater."

Douglas D. Johnson, senior policy adviser to National Right to Life

the National Archivist, who administers the ratification process and was sued in December by the attorneys general of Alabama, Louisiana and South Dakota.

"The people had seven years to consider the ERA, and they rejected it," the attorneys general 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."

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 remove the deadline and 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, said the legal opinion does not stop Virginia or any state legislature from going forward, or prevent Congress from removing or revising the ERA deadline.

"Once you have 38 states ratifying plus action from Congress on the deadline, it's very clear that the amendment is effective, in my opinion," she said.

Nevertheless, ERA opponents declared victory, even as demonstrators on both sides of the issue tried to rally lawmakers in Richmond.

"The narrative that the ERA is on the verge of ratification is pure political theater," said Douglas D. Johnson, senior policy adviser to National Right to Life. "This is not a close call. . . . They really do have to start over."

The ERA Coalition said it "strongly disagrees" with the memo. "This OLC opinion is not

Washington Post
January 9, 2020

binding on Congress, the courts, or the states that have expressed their ongoing will to give women constitutional equality," it said in a statement.

"This is one opinion, one memo," said Kati Hornung, coordinator for the VaRatifyERA campaign, who was outside the Virginia Capitol building. "The Constitution is enduring."

Several members of Congress who are trying to either extend or remove the deadline also pushed back at the opinion.

"If this opinion is meant to slow down the momentum toward women's equality, it will not be successful," said Rep. Carolyn B. Maloney (D-NY). "I do not believe that the OLC 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 "repugnant."

"I think what you're going to see is a continued commitment to see this through," Herring said. "We are ready to anything we need to do."

patricia.sullivan@washpost.com

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 and ongoing)

Since January 2020, ERA revivalists have pressed forward on multiple fronts based on “deadline denial” claims that the 1972 ERA has been ratified and is part of the Constitution, requiring at most minor steps by Executive Branch and/or Legislative Branch actors in order 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-CA) 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](#) and author 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 as 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...

Yet even in January 2020, when the Virginia legislature adopted its pseudo-ratification, there were already multiple earlier ERA-related actions by the federal courts that undercut the claim that the 1972 ERA remained viable. 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.

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 so-called “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

THE EQUAL RIGHTS AMENDMENT



"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

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.

CNN politics

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



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



A marcher holds a sign that says "ERA USA" during the Woman's March in the borough of Manhattan in New York on January 18, 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."

"Congressional Promulgation"

The idea that Congress can decide *after the fact* whether or not a proposed constitutional amendment has achieved ratification is known as the "congressional promulgation theory." Judge Contreras observed 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 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."

However, since Congress had not taken any action to endorse the notion that the ERA had been ratified, Judge Contreras did not formally rule on whether Congress has anything to say about it.

The attorneys general of Illinois and Nevada appealed to the U.S. Court of Appeals for the District of Columbia (Virginia dropped out, with a newly elected attorney general announcing that Virginia's position was now that the Archivist had been correct not to ratify the ERA).

In one noteworthy exchange during the oral argument before the three-judge appeals panel, 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.

As discussed earlier, in its ruling issued on February 28, 2023, the unanimous three-judge panel ruled that Illinois and Nevada had not shown that the Archivist was wrong in holding that the ERA had not achieved



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

ratification. The panel demolished (on page 25) the states’ claim that the placement of the ratification in the Proposing Clause rendered it ineffectual. The panel did not have to address “congressional promulgation,” since Congress has not approved a measure dealing with the ERA since 1978. The Illinois and Nevada attorneys general did not seek review of the unanimous panel ruling by

the full U.S. Court of Appeals for the District of Columbia. Nor did they appeal to the U.S. Supreme Court.

The Campaign Against the Archivists (2019 and ongoing)

Even though Illinois and Nevada carried forward their lawsuit during 2020-2023, ERA revivalist leaders inside and outside of Congress spoke seldom about the federal courts. For the most part, in their public pronouncements, whether to journalists or others, they quickly glossed over or simply did not mention the adverse judgments of federal courts. They directed their 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 2020-2023.

The Biden Administration’s Justice Department did re-examine the 2020 OLC memo, a process that concluded with the 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 joint resolution pending in Congress 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 “entitled” to disagree merely stated a truism. Predictably, 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 reserved judgment on that constitutional question (and, as already quoted, a senior Justice Department lawyer later cast doubt on that premise in oral argument before the U.S. Court of Appeals for the District of Columbia on September 28, 2022).

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. It was more than a year later that a Democrat-dominated three-judge panel of the U.S. Court of Appeals for the District of Columbia issued its unanimous ruling on the status of the ERA—and it was another sharp blow to ERA revivalism, as described in the previous subsection.

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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 House Oversight Committee, 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.” At the same press event, Rep. Jackie Speier (D-Calif.) said, “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 campaign intended to pressure 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](#).

“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 *NY 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 2022 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.”



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.”



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, Congresswoman 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). But that turned out to be mere bluster. 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, and she had a second confirmation hearing. In a written response to Senator Jim Lankford (R-OK) dated February 28, 2023, Shogan affirmed her predecessor's position that she would certify the ERA only if directed to do so by "a final court order." Shogan was confirmed as Archivist on May 10, 2023, by a vote of 52-45.



Senator James Lankford
Post-Hearing Questions for the Record
Submitted to Colleen J. Shogan

Nomination of Colleen J. Shogan to be Archivist of the United States, National Archives and Records Administration

February 28, 2023

On the Equal Rights Amendment:

You have previously stated that you agree with former Archivist David Ferriero that "NARA defers to DOJ on this issue [publication of the ERA] and will abide by the OLC opinion, unless otherwise directed by a final court order."

1. Is that still your position?

YES

2. What do you understand as the role of NARA, and the Archivist in particular, in the constitutional amendment process?

I understand it as a ministerial function.

THE EQUAL RIGHTS AMENDMENT

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

On April 27, 2023, as the Senate prepared to conduct a procedural vote on a “deadline removal” resolution (S.J. Res. 4), the White House issued a Statement of Administration Policy that called on the Senate to adopt the measure. Yet the statement avoided asserting that the resolution would have any constitutional effect, noting only that it would “declare” that the ERA was part of the Constitution, and that Congress had the right to “declare” this.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

April 27, 2023
(Senate)

STATEMENT OF ADMINISTRATION POLICY

S.J. Res. 4 – A Joint Resolution removing the deadline for the ratification of the

Equal Rights Amendment

(Sen. Cardin, D-MD, and 52 cosponsors)

The Administration strongly supports Senate passage of S.J. Res. 4, a Joint Resolution that would declare the Equal Rights Amendment to be valid to all intents and purposes as part of the Constitution. As a recently published Office of Legal Counsel memorandum makes clear, there is nothing standing in Congress’s way from passing such a resolution.

In the United States of America, no one’s rights should be denied on account of their sex. It is long past time to definitively enshrine the principle of gender equality in the Constitution. Gender equality is not only a moral issue: the full participation of women and girls across all aspects of our society is essential to our economic prosperity, our security, and the health of our democracy.

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.

For example, in an opinion piece published in the *Washington Post* on November 22, 2021, David Pozen and Thomas P. Schmidt of Columbia Law School asserted, “On many matters of constitutional law, the legal community has accepted that the Supreme Court enjoys the final word. Questions about whether an amendment has become part of the Constitution are an important exception. Congress, not the courts, is the primary arbiter of an amendment’s validity.”

Likewise, 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.”

However, even the notion 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. One example is found in an essay by Julie C. Suk, published in *The New Republic* on December 5, 2022. Suk is 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?”

ERA Revivalism in Congress: Legislative Failures and the “Messaging Exercise”

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.

While under Democratic control on March 17, 2021, the U.S. House of Representatives passed a “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. Longtime ERA analyst Douglas Johnson commented, “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 the House of Representatives actually exercises its powers under Article V, as opposed to engaging in cheap theatrical performances.” (See table, page 56.)

Although the Senate was under Democratic control in 2021-2022, Senate Majority Leader Chuck Schumer (D-NY) never forced a vote on H.J. Res. 17 before the 117th Congress ended on January 3, 2023, forcing ERA advocates to re-start the process.

In the new 118th Congress, Schumer did make a motion to bring to the floor a new measure purporting to retroactively nullify the deadline and make the ERA part of the Constitution, S.J. Res. 4, sponsored by Senator Ben Cardin (D-MD). It failed on a 52-47 vote on April 27, 2023 (60 votes required), with the support of all voting Democrats but only two Republican senators (Lisa Murkowski of Alaska and Susan Collins of Maine). If all senators had been present, the tally would have been 53-47 to advance the ERA-affirming measure.

In the House of Representatives, a companion measure (H.J. Res. 25) was introduced by Rep. Ayanna Pressley (D-MA). Not far into the second year of the 118th Congress, on February 13, 2024, the Pressley measure had been co-sponsored by 208 out of 212 House Democrats, but by only a single Republican (Rep. Brian Fitzpatrick, R-PA).

Since a Republican majority took control of the House in January 2023, the Pressley measure has no prospect of being sent from the House Judiciary Committee to the floor. In July 2023, Pressley filed a “discharge petition,” which would force a floor vote if signed by 218 of the 435 House members—but seven months later, it only had 204 signers. Not a single member of the majority (Republican) party is among the signers—a clear indication that the discharge petition will not succeed.

THE EQUAL RIGHTS AMENDMENT

Gillibrand and Bush Launch Insubstantial “ERA Now” Measure

In July, 2023, Senator Kirsten Gillibrand (D-NY) and Rep. Cori Bush (D-MO) introduced another ERA-promoting measure, informally labeled “ERA Now,” which has even less substance—a joint resolution (S.J.Res. 39, H.J. Res. 82) that would simply declare the “sense of Congress” that the ERA has been ratified and that the Archivist “should” publish it as part of the Constitution. A “sense of Congress” resolution, even if adopted by both houses, never has force of law on any subject.

Despite its gossamer nature, the Gillibrand-Bush measure served as justification for *New York Times* reporter Annie Karni to write a one-sided, 1400-word treatment that ran under the headline “Democrats Try a Novel Tactic to Revive the Equal Rights Amendment” (July 13, 2023). Karni did not mention any of the federal court decisions that shed light on the ERA’s status—not even the adverse D.C. Circuit ruling that had been handed down just five months earlier.

Senator Gillibrand was clearly pleased with the *Times*’ promotional piece, which she sent out on the social media platform X/Twitter, at the same time embracing essentially the same claim that had earned Congresswoman Maloney “Four Pinocchios” from the *Washington Post* Fact Checker 17 months earlier: “The Equal Rights Amendment has cleared every single constitutional hurdle towards becoming the 28th Amendment. It only needs one signature.” [That is, the signature of the Archivist.]

Senator Gillibrand said in one interview, “I don’t think the preamble is relevant and I think legal scholars will agree. That is why we are asking the president to tell the archivist that she may now sign and publish it as the 28th Amendment.” (*City and State NY*, August 8, 2023) Gillibrand did not mention that the claim about the “preamble” had been rejected by a unanimous three-judge panel of the U.S. Court of Appeals for the District of Columbia on February 28, 2023.

As of February 13, 2024, Gillibrand’s resolution had 21 cosponsors and Bush’s 70, all Democrats.

There is currently no prospect that either the Cardin-Pressley measure or the Gillibrand-Bush measure will pass in either house of Congress during the remainder of the 118th Congress (which ends January 3, 2025). However, if during a future Congress Democrats held a wider majority in the Senate and controlled the House at the same time, there is a possibility that one of the ERA-affirming measures would win approval by both houses during the same Congress. Based on experience, many organs of the news media can be expected to embrace and amplify claims that such a retroactive action by Congress would be efficacious, despite the multiple constitutional implausibilities.

On March 23, 2023, the fashion publication *ELLE.com* ran a prominent feature about Congresswoman Cori Bush and the ERA, which included this passage: “As for why she’s pushing for the ERA now, at a time when Republicans control the U.S. House, Bush said, ‘It’s not a sprint, it’s a marathon.’ She added, ‘If we can start building now, then maybe in two years, when hopefully we are in the majority, we can be in a place where the



advocates, the activists, the folks that are most directly impacted, the legislators in Congress and on the state level and municipal levels, are all working together to get this done.”

In her July 13, 2023 article celebrating Senator Gillibrand’s “creative legal theory,” *New York Times* reporter Annie Karni wrote, “Even if the resolution proves to be no more than a messaging exercise, some proponents said it was still meaningful,” noting that “almost 80 percent of Americans supported adding the Equal Rights Amendment to the Constitution in a 2020 Pew Research poll.”

In other words, so long as the phrase “Equal Rights Amendment” is seen as politically useful for some who hold or seek federal office, don’t expect them to be too fastidious about the niceties of the constitutional amendment process.

Doublethink by Democrats on Rescissions

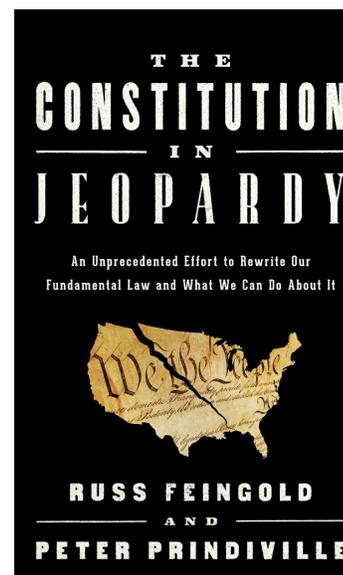
Four state legislatures (Nebraska, Tennessee, Idaho, and Kentucky) ratified the 1972 ERA, but then, before the ratification deadline of March 22, 1979, adopted new resolutions *rescinding* their previous ratifications. The South Dakota legislature did something different: On March 5, 1979, it adopted a resolution making it clear that its original ratification would expire on March 22, 1979, which arguably would have been the case anyway, but South Dakota sometimes appears on lists of “rescinding” states.

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 therefore rescissions 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 Congressman Jamie Raskin (MD), the ranking Democrat on the House Oversight Committee—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 then-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 to Maloney 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.]



THE EQUAL RIGHTS AMENDMENT

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...”

Longtime ERA analyst Douglas Johnson commented, “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. The doublethink of many Democratic activists and office holders about state legislative rescissions under Article V are one glaring example of an unprincipled approach to the constitutional amendment process.”

How Support for the Equal Rights Amendment in the U.S. House of Representatives Has Plunged Over a 52-Year Period

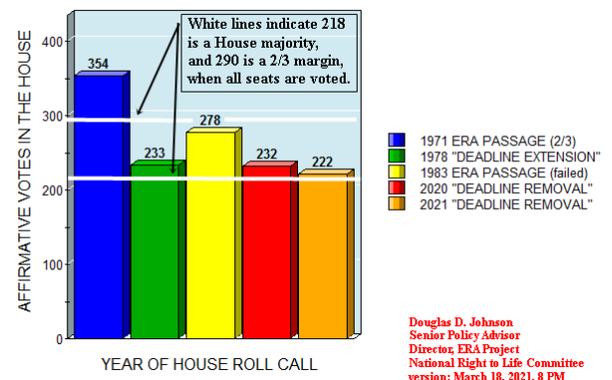
When Congress approved the Equal Rights Amendment resolution for submission to the states in 1971-1972, it did so by lopsided margins—but that occurred only after ERA sponsors reluctantly concluded that they must accept a ratification deadline in order to overcome opposition from ERA skeptics. (“Proponents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

Over a 52-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.

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



50-YEAR ERA SUPPORT IN U.S. HOUSE 1971-2021 BY % OF VOTING MEMBERS



THE EQUAL RIGHTS AMENDMENT

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.

NRLC's consistent position was reiterated in a letter to U.S. senators dated April 24, 2023, which concluded, "National Right to Life will heavily weigh the vote on advancing S.J. Res. 4, a measure openly declared by its backers as intended in part to erect a constitutional barrier against any protections for unborn members of the human family." (The letter is reproduced on pages 60-61.)

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-NY), 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 of Representatives, "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 *19thnews.org* 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 for most prominent ERA advocates. 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...”

ERA PROJECT
Columbia Law School

2022 Symposium

**THE ERA:
A NEW GUARANTEE OF SEX EQUALITY
IN THE U.S. CONSTITUTION**

March 4, 2022 | Session 3: ERA and Abortion - Equality Arguments for Reproductive Rights

- **Reva Siegel**, Nicholas deB. Katzenbach Professor of Law, Yale Law School
- **Serena Mayeri**, Professor of Law and History, University of Pennsylvania Carey Law School
- **Cary Franklin**, McDonald/Wright Chair of Law and Faculty Director, Williams Institute, UCLA School of Law
- Moderator: **Katherine Franke**, James L. Dohr Professor of Law and Faculty Director, ERA Project, Columbia Law School

COLUMBIA WOMEN'S LAW CENTER & LAW

- 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 ...”
- 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).

“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 EQUAL RIGHTS AMENDMENT

- 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.”
- 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 in an essay titled [“The Equal Rights Amendment Is a Comprehensive Fix That Can Save *Roe*”](#): “*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.” (published March 22, 2022)

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](#)). Moreover, on January 29, 2024, the Pennsylvania Supreme Court construed a state law limiting public funding of abortion to be a form of sex-based discrimination and therefore “presumptively unconstitutional” under the 1971 Pennsylvania Equal Rights Amendment, which contains language virtually identical to the 1972 federal ERA proposal. ([Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services](#)).

RESOURCES

Abundant additional documentation on the history of the Equal Rights Amendment and the [ERA-abortion connection](#) is available on the [National Right to Life website ERA page](#).

The X/Twitter account @ERANoShortcuts, although not NRLC-affiliated, is recommended for those who wish to track ERA-related developments in all three branches of the federal government, and in the news, “from an ERA-skeptical perspective.”

April 24, 2023

202-378-8863

Re: In opposition to S.J. Res. 4 (Cardin), purporting to retroactively “remove” the ratification deadline and pre-deadline rescissions for long-expired 1972 Equal Rights Amendment

Dear Senator:

The National Right to Life Committee (NRLC), the federation of state right-to-life organizations, urges you to vote against cloture on the motion to proceed to S.J. Res. 4 (Cardin), a measure purporting to retroactively revive the 1972 Equal Rights Amendment and insert it into the text of the U.S. Constitution – even though multiple federal court decisions have held that the ERA expired over 50 years ago. We understand the Senate may conduct a roll call on such a cloture motion on **Thursday, April 27**.

The language of the 1972 ERA would easily lend itself to use as a powerful pro-abortion legal weapon, potentially invalidating all laws or government policies that protect unborn members of the human family, at any stage of development, or that even indirectly impede access to abortion, including any limits on government funding of elective abortion. Leaders of prominent pro-abortion and pro-ERA advocacy groups now openly proclaim that they believe this is the only proper construction of the ERA. They now admit that decades of denial and deflection of pro-life concerns about the ERA were merely “[a strategic decision](#)” (i.e., a deception). The mask has now been [discarded](#). All senators who support *any* limits on abortion or *any limits* on government funding of elective abortion should take the pro-abortion advocacy groups at their current word as to how they intend to employ the vague 1972 ERA language, if it ever becomes part of the Constitution.

Moreover, S.J. Res. 4 is an attack on the integrity of the constitutional amendment process itself. Every senator who respects the rule of law should oppose it.

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.”

On February 28, 2023, a unanimous panel of the U.S. Court of Appeals for the District of Columbia (Judges Wilkins, Childs, and Rao) rejected an appeal by Illinois and Nevada, urging the court to order the Archivist to certify the ERA as ratified. The unanimous panel demolished a key legal claim of the ERA revival scheme -- the pretense that the ERA’s ratification deadline was not binding because it was placed in the Proposing Clause of the 1972 ERA Resolution. (The court observed (p. 25), “[I]f that were the case, then the specification of the mode of ratification in every amendment in our nation’s history would also be inoperative.”) Contrary to spin by the pro-ERA lobby, the D.C. Circuit ruling contained not a word suggesting that Congress has any power to retroactively alter the status of the 1972 ERA, which was not an issue before the court.

As the *Washington Post* pointed out in [a February 9, 2022 fact check](#), over [the past 41 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.” Since 1982, 29 federal judges have an opportunity to vote to validate or advance some element of the ERA-revivalists’ legal claims, but the ERA-revival litigants have yet to win a single vote, from a single judge, on a single component in their hodge-podge array of novel legal claims. Of the federal judges involved, 15 were appointed by Republican presidents and 14 by Democratic Presidents.

Defending Life in America Since 1968

THE EQUAL RIGHTS AMENDMENT

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

2

Some of the constitutional violations embedded in S.J.Res. 4 are critiqued in Senate Resolution 107, sponsored by Senator Hyde-Smith; we urge you to co-sponsor Senator Hyde-Smith’s helpful measure.

Article V does not allow Congress to engage in a “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 it.

Even if Congress somehow did hold power to execute a retroactive bait-and-switch on the deadline, the authors of S.J. Res. 4 have [formally declared the resolution to be an exercise of Congress’ Article V powers](#). That means *approval* would require a *two-thirds* vote. 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)

S.J. Res. 4 not only purports to retroactively remove the deadline, but also declares the ERA to be part of the Constitution, thereby implicitly disregarding pre-deadline *rescissions* by Nebraska, Tennessee, Idaho, and Kentucky. Yet the legislatures of the states represented by the prime sponsor, Senator Cardin, and by the Judiciary Committee Chairman, Senator Durbin, both notified the Archivist in recent years of formal actions rescinding their previous ratifications of the Corwin Amendment. Were those legislative actions (in 2014 and 2022, respectively) merely exercises in political theater, or did they have legal force?

Finally, no Congress has power to act on any measure after it has *expired*. The Senate cannot today take up and pass the ERA “deadline removal” measure passed by the House on March 17, 2021, because it has expired. The current Congress cannot override a veto by President G.H.W. Bush; his veto messages have expired. 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, and all within a single Congress. As the late Justice 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 will heavily weigh the vote on advancing S.J. Res. 4, a measure openly declared by its backers as intended in part to erect a constitutional barrier against any protections for unborn members of the human family.

The recent history of judicial, executive, and legislative actions on the Equal Rights Amendment is documented in detail, with links to primary sources, in the [NRLC Special Report on the Equal Rights Amendment](#) (January 23, 2023). For further information, please contact us at (202) 378-8863, or via e-mail at djohnson@nrlc.org. Thank you for your consideration of NRLC’s position on this vital matter.

Respectfully submitted,



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



National
RIGHT TO LIFE

Protecting Life in America Since 1968.

1446 Duke Street | Alexandria, Virginia 22314

THE SUPREME COURT & ABORTION

A Brief Synopsis of Cases



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

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

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

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

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

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

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

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

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

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

Poelker v. Doe (1977)

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

Colautti v. Franklin (1979)

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

Bellotti v. Baird (II)* (1979)

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

Harris v. McRae (1980)

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

Williams v. Zbaraz (1980)

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

HL v. Matheson (1981)

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

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

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

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

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

Simopoulous v. Virginia (1983)

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

THE SUPREME COURT AND ABORTION

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

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

Webster v. Reproductive Health Services (1989)

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

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

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

Rust v. Sullivan (1991)

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

Planned Parenthood of Southern Pennsylvania v. Casey (1992)

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

Mazurek v. Armstrong (1997)

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

THE SUPREME COURT AND ABORTION

Stenberg v. Carhart (2000)

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

Gonzales v. Carhart (2007)

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

Whole Woman's Health v. Hellerstedt (2016)

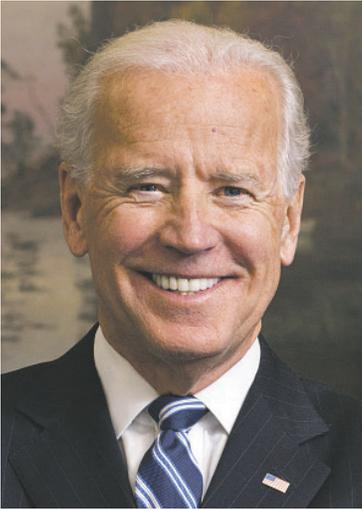
By a vote of 5-3, the Court declared unconstitutional Texas laws requiring abortion clinics to meet surgical-center standards, and requiring abortionists to have admitting privileges at a hospital within 30 miles. The majority ruled that these requirements constituted an “undue burden” on access to previability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

June Medical Services LLC v. Russo (2020)

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

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."

-President 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. The Supreme Court will hear a case this term regarding the loosening of safeguards surrounding chemical abortions, which now make up over half of all abortions.
- **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. In addition, the Biden Administration's 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. All three of these justices voted with the majority in the 2022 *Dobbs* case which returned the ability to regulate abortion to elected officials. 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 "Protecting Life in Global Health Assistance" to prevent foreign aid from being used to fund the global abortion industry.
- **Abortion Funding:** In 2017, President Trump issued a statement affirming his strong support for the No Taxpayer Funding for Abortion Act, saying he "would sign the bill." The bill would permanently prohibit any federal program from funding elective abortion.
- **Funding Abortion Providers:** In 2018, President Trump's Health and Human Services Department issued regulations to ensure Title X funding did not go to facilities that perform or refer for abortions. In 2017, President Trump signed a resolution into law that overturned an eleventh-hour regulation by the Obama administration that prohibited states from defunding certain abortion facilities in their federally-funded family planning programs.
- **Protecting Pro-Life Policies:** President Trump had pledged "to veto any legislation that weakens current pro-life federal policies and laws, or that encourages the destruction of innocent human life at any stage."
- **Appointments:** President Trump appointed numerous pro-life advocates in his administration and cabinet including Counselor to the President Kellyanne Conway, Secretary of State Mike Pompeo, Secretary of Education Betsy DeVos, Secretary of Energy Rick Perry, United Nations Ambassador Nikki Haley, Secretary of Housing and Urban Development Ben Carson, and Chief of Staff Reince Priebus.
- **Defunding Planned Parenthood:** President Trump supported directing funding away from Planned Parenthood, the nation's largest abortion provider. In a September 2016 letter to pro-life leaders, he noted that "I am committed to...defunding Planned Parenthood as long as they continue to perform abortions, and re-allocating their funding to community health centers that provide comprehensive health care for women."
- **International Abortion Advocacy:** The Trump Administration cut off funding for the United Nations Population Fund due to that agency's involvement in China's forced abortion program. Additionally, President Trump instructed the Secretary of State to apply pro-life conditions to a broad range of health-related U.S. foreign aid.
- **Protecting the Unborn:** President Trump supported the Pain-Capable Unborn Child Protection Act. This legislation extends protection to unborn children who are at least 20 weeks because by this point in development (and probably earlier), the unborn have the capacity to experience excruciating pain during typical abortion procedures.



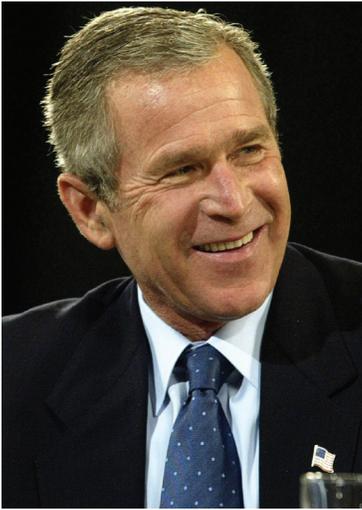
THE PRESIDENTIAL RECORD ON LIFE

President Barack Obama 2009-2017

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

-President Barack H. Obama

- **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. Justice Alito wrote the majority opinion in the 2022 *Dobbs* case which overturned *Roe v. Wade*.
- 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.



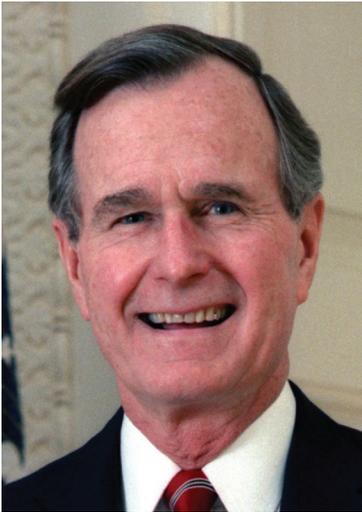
THE PRESIDENTIAL RECORD ON LIFE

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 Bill Clinton

- 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 “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 titled *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 2,500 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 is a pro-life political action committee which works to elect, on the state and federal level, officials who respect democracy's most precious right, the right to life.
- the **National Right to Life Victory Fund**, an independent expenditure political action committee founded in 2012 with the express purpose of electing a pro-life president and electing pro-life majorities in the U.S. House of Representatives and U.S. Senate.
- the **National Right to Life Educational Trust Fund** and the **National Right to Life Educational Foundation, Inc.**, which prepare and distribute a wide range of educational materials, advertisements, and pro-life educational activities.
- **outreach efforts** to groups affected by society's lack of respect for human life: the disability rights community; the post-abortion community; the Hispanic and 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.nationalrighttolifeneeds.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, 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:
<https://www.nrlc.org/wp-content/uploads/StateofAbortion2024.pdf>.



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