

THE  
STATE<sup>OF</sup>  
**ABORTION**  
IN THE UNITED STATES

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JANUARY 2021



## **The State of Abortion in the United States**

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

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## CAROL TOBIAS

National Right to Life President

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

Their task became more challenging when the U.S. Supreme Court federalized the abortion issue. In its twin *Roe v. Wade* and *Doe v. Bolton* decisions, which were handed down on January 22, 1973, the Court legalized abortion for any reason. Tragically, 48 years later, National Right to Life estimates that more than 62 million unborn children have lost their lives as a result of those decisions.

However, the right-to-life movement has remained undeterred. Through our determination to protect mothers and their children, we continue to see evidence that our efforts to educate our nation about the unborn child's humanity, and our efforts to enact protective pro-life legislation, are having a tremendous impact in moving our nation away from *Roe* and *Doe*'s deadly legacy.

Now, on this 48th anniversary of the Court's action, we pause to look at the state of abortion in the United States. From recent data analyzed in these pages, we know the annual number of abortions is in an overall decline. This drop in numbers can be traced to a number of factors, but among them are the efforts by National Right to Life and its network of state affiliates to enact protective laws that provide legal protection to unborn children and offer hope and help to their mothers. These legislative efforts are at the very heart of our work, and they are one of the keys to ending abortion in the United States.

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

But there is still much to be done.

This eighth annual "State of Abortion in the United States" is not just a snapshot of where we are as the nation observes the 48th anniversary of *Roe v. Wade* and *Doe v. Bolton*, but also a blueprint for how we move forward to build a culture that values life and respects mothers and their children.



THE STATE OF ABORTION  
IN THE UNITED STATES

# UNITED STATES ABORTION NUMBERS:

## Short Term Increase; Long Term Decline

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

Abortion data collected by the Guttmacher Institute (which was originally founded as a special research arm of Planned Parenthood) are considered more complete and reliable because the organization relies on survey data collected directly from abortionists in all 50 states. The CDC, on the other hand, relies on voluntary reporting from state health departments and agencies. As a result, CDC's annual report has no data for Maryland, New Hampshire, and California since 1998. Other caveats are provided within the analysis of CDC data below.

As a result of our analysis of data from both Guttmacher through 2017, and the CDC through 2018, and estimating figures for subsequent years (2017-2020), National Right to Life estimates that 62,504,904 abortions have been performed in the United States since 1973.

In late November 2020, the U.S. Centers for Disease Control (CDC) released its latest abortion surveillance report, bringing its data up two years to 2018<sup>1</sup>.

In 2016, all the statistics measuring abortion — the raw number, the abortion rate, and the abortion ratio — reached historic lows.

Numbers for 2017 continued to offer encouraging all time lows in all three categories. For example, the number of abortions counted by the CDC decreased to 612,719. In 2018, the CDC found slight increases yet there were still fewer abortions than in 2016.

Looking at the big picture, if you compare the CDC abortion for 2008 (825,564) to the CDC total for 2018 (619,591), the number has dropped by nearly 25 percent in a just a decade.

As always with the CDC, we offer the important caveat that its numbers significantly underestimate the actual national totals. There is no data from California, New Hampshire, and Maryland, which the CDC admits, using data from Guttmacher, would otherwise account for nearly one out of every five abortions performed in the U.S.

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



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

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

**ESTIMATED ABORTIONS  
IN THE UNITED STATES  
62,502,904  
SINCE 1973**

### **Major CDC Abortion Measurements**

The CDC had recorded 623,471 abortions in 2016 and saw that figure drop to 612,719 in 2017 before rising again to 619,591 for 2018.

Other CDC measures of abortion show a similar trend. For the CDC, the abortion rate measures the number per 1,000 women of reproductive age (15-44 years).

The CDC's abortion ratio looks at the number of abortions for every thousand live births. Both those measures dropped for 2017 but rose for 2018.

The abortion rate for 2016 was 11.6 per thousand women of reproductive age. In 2017, the CDC obtained a reduced rate of 11.2. That figure ticked up to 11.3 abortions in 2018.

Even with that slight increase, every abortion rate from 2011 onward has been lower than the rate of 14 per thousand women of reproductive age in 1973, the first year abortion was legalized throughout the United States.

The abortion ratio looks specifically at the outcomes with pregnant women. That number dropped from 186 abortions for every thousand live births in 2016 to 185 in 2017. It increased by 2% in 2018, rising to 189 abortions for every thousand live births. Again, even with that increase, it is still lower than the 196.3 recorded in 1973, Roe's first year.

Taken together, what these mean is, despite what may be the signal of what we hope is only a temporary stall, we are still very close to the lowest points ever recorded by the CDC.

Figures would be higher if data from California, New Hampshire, and Maryland were factored in. Even so, they would still only be about half the figures recorded back in the 80s and 90s. (For example, in 1990, the CDC counted 1,429,247 abortions. In 1980, the abortion rate was 25 per thousand women of reproductive age, according to the CDC. In 1984, the CDC calculated that the abortion ratio was 364.1 abortions for every 1,000 live births.)

Any way one looks at it, abortion has become a less common feature of American women's lives. Though the size of the population has increased, fewer women are having abortions. The bottom line



# UNITED STATES ABORTION NUMBERS

is that the likelihood of a pregnant woman choosing to abort her baby has dropped considerably.

And that is an enormous tribute to the faithful work of the pro-life community.

A closer look at the demographics tells us not only more about those currently having abortions in the U.S. but also may give us an idea why the numbers may have started to trend up.

## Individual States Differ

One of the first things you notice when you look at CDC tables of abortion statistics is the wide variation in state abortion rates and ratios. Of course, the larger states report more abortions, but certain states, largely on the coasts, or with major metropolitan areas, or where there are more established clinics, also appear to have high abortion rates and abortion ratios.

While the national abortion rate was 11.3 abortions per thousand women of reproductive age, areas such New York City (26.8) and the District of Columbia (25.3) were reporting rates more than double that. Other notable states with rates considerably above the national average were Florida (18.1), Illinois (16.9), Georgia (15.7), Nevada (14.8), Michigan (14.2), Connecticut (13.9), New Jersey (13.6), New York State (13.5), North Carolina (13.5), Rhode Island (13.5), and Massachusetts (13.1).

Many of the same states show up with high abortion ratios. As noted above, that refers to the number of abortions for every 1,000 live births.

While the national abortion ratio was 189 for 2018, several states still recorded more than 200 abortions for every 1,000 live births. Highest once more were the District of Columbia, with 518 abortions for every 1,000 live births, and New York City, with 457 for every 1,000 live births.

Other states with high abortion ratios included Florida (317), Illinois (293), Georgia (269), Connecticut (268), Rhode Island (268), and Massachusetts (264). New Jersey (247), Michigan (243), New York State (236), North Carolina (232), New Mexico (227), Pennsylvania (224), Vermont (222), Oregon (207), and Washington State (201) complete the list of those with abortion ratios over 200.

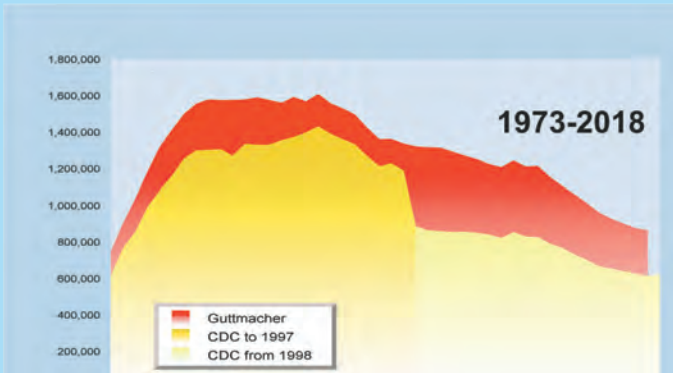
Sometimes high abortion numbers are, at least in part, because of high numbers of women crossing the border; there may be an abortion clinic just across the state line. For example, nearly two-thirds (65.4%) of abortions in the District of Columbia were performed on women from other states.

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

§ NRLC projection for calculation

	Guttmacher	CDC
1973	744,610	615,831
1974	898,570	763,476
1975	1,034,170	854,853
1976	1,179,300	988,267
1977	1,316,700	1,079,430
1978	1,409,600	1,157,776
1979	1,497,670	1,251,921
1980	1,553,890	1,297,606
1981	1,577,340	1,300,760
1982	1,573,920	1,303,980
1983	1,575,000	1,268,987
1984	1,577,180	1,333,521
1985	1,588,550	1,328,570
1986	1,574,000	1,328,112
1987	1,559,110	1,353,671
1988	1,590,750	1,371,285
1989	1,566,900	1,396,658
1990	1,608,600	1,429,247
1991	1,556,510	1,388,937
1992	1,528,930	1,359,146
1993	1,495,000	1,330,414
1994	1,423,000	1,267,415
1995	1,359,400	1,210,883
1996	1,360,160	1,225,937
1997	1,335,000	1,186,039
1998	1,319,000	884,273*
1999	1,314,800	861,789*
2000	1,312,990	857,475*
2001	1,291,000	853,485*
2002	1,269,000	854,122*
2003	1,250,000	848,163*
2004	1,222,100	839,226*
2005	1,206,200	820,151*
2006	1,242,200	852,385*
2007	1,209,640	827,609*
2008	1,212,350	825,564*
2009	1,151,600	789,217*
2010	1,102,670	765,651*
2011	1,058,490	730,322*
2012	1,011,000	699,202*
2013	958,700	664,435*
2014	926,190	652,639*
2015	899,500	638,169*
2016	874,100	623,471*
2017	862,300	612,719*
2018-2020	862,320 §	619,820*

## Reported Annual Abortions



1973	744,610	615,831
1974	898,570	763,476
1975	1,034,170	854,853
1976	1,179,300	988,267
1977	1,316,700	1,079,430
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2017	862,320	612,719*
2018-20	862,320 §	619,820*

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

§ NRLC projection for calculation

# ABORTION STATISTICS

United States Data and Trends

## Abortion Drop Continues

There are two basic sources on abortion incidence in the United States:

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

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

- Total abortions dropped 29.9% from 1998 to 2018 with the CDC, and fell 46.4% from 1990 to 2017 with GI.
- Total abortions fell below 1 million for the first time in the 2013 GI count and have continued downward to 862,320 in the most recent GI figures for 2017.
- The **abortion rate** for 2017 for GI was 13.5 abortions for every 1,000 women of reproductive age (15-44), less than half what it was in 1981 (29.3) and even lower than when abortion was legalized in the U.S. in 1973 (16.3).
- Guttmacher says there were 18.3 abortions for every 100 pregnancies ending in live birth or abortion in 2016, 18.4 for 2017, lower **abortion ratios** than any since 1972.
- Guttmacher says that the number of abortion "providers" has dropped from a high of 2,918 in 1982 to 1,587 in 2017.
- Most of the reduction in abortions seen between 2008 and 2017 occurred in facilities performing a thousand or more abortions a year. A loss of 122 such facilities from 2008 to 2017 was accompanied by a decline of 346,280 abortions, virtually all of the drop between those years.
- The percentage performed with chemical abortifacients like mifepristone rose from 16.4% in 2008 to 39.4% in 2017.

## The Consequences of *Roe v. Wade*

# 62,502,904

**Total abortions since 1973**

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



# UNITED STATES ABORTION NUMBERS

Kansas is another one of those states that had an abortion rate (12.4) and abortion ratio (192) above the national average. According to the CDC, 50.2% of the abortions performed there were obtained by out of state women. Notably, Planned Parenthood's Overland Park clinic in Kansas is just about a mile from the Missouri state line.

## **Impact of Clinic Closures**

The CDC does not tell us how many abortion clinics there are in each state. However, several of these states with higher abortion rates and ratios either have large numbers of clinics or large numbers of clinics relative to the size of their population.

Data from Guttmacher helps flesh out the CDC state data.

Guttmacher identified California (not tracked by the CDC) as having the most abortion clinics—161 in 2017 – followed by New York with 113, Florida with 65, and New Jersey with 41. There were also high numbers of abortion clinics in Washington State (40), Connecticut (26), Maryland (25), Michigan (21), and Texas (21).

Several of these show up in our earlier list of states with high abortion rates and ratios. Unsurprisingly, the concentration of clinics appears to impact both the state abortion numbers and overall totals reported by the CDC.

The number of hospitals, abortion clinics, and private physician's offices performing abortion has fallen dramatically in the U.S., in many ways anticipating the drop in abortion numbers. After reaching a high of 2,918 in 1982, the number of "abortion providers" began a steady fall. In 2017, Guttmacher reported just over half –1,587 – the number of original "providers."

Not surprisingly, abortions measured by both Guttmacher and the CDC (even without California) dropped by almost half during this time.

Clinics have continued to close in many places, particularly older ones in economically depressed areas. But in recent years that decline has begun to slow. Many of those older clinics have often been replaced by shiny, new regional mega-centers, designed to handle and capable of performing high volumes of abortions (or managing high numbers of webcam chemical abortions).

With some 74% of abortions being performed at centers with caseloads of a thousand or more a year (Guttmacher figures for 2017), the building of these abortion megaclinics comes with a potential to reduce or reverse these recent abortion declines. Perhaps some of that is reflected in the recent increase reported by the CDC.

Many private physicians have also added chemical abortions to their practice, which likely accounts for some of the recent slight increase in the number of abortions.

## Most Demographics Fairly Consistent

Other demographic data from the CDC are largely along the lines of previous reports. Most abortions are performed on women in their twenties (57.7%). These women also have the higher abortion rates (19.1 for women ages 20-24, 18.5 for women 25-29).

Younger women, teenagers, have lower abortion rates (6.0 for females 15-19, 0.4 for those under 15) but higher abortion ratios (334 abortions per 1,000 live births for teens 15-19 and 872 for those under 15). What this means is that they are much more likely to abort when they do become pregnant.

More than 4 out of 5 (85.2%) of aborting women are unmarried, though 59.3% have already had at least one previous live birth. Just over four in ten (40.2%) reported having at least one prior abortion. About one in ten (9.9%) indicated having two past abortions, while 6.4% admitted to having had three or more.

All told, the CDC now says it expects that about fewer than one in five (18%) of all pregnancies will end in abortion. It does not provide earlier estimates to give us a frame of reference in this report, but popular figures once put those previous estimates at one in three or even one in four.

Of course, all CDC data is somewhat compromised by the absence of official statistics from California, Maryland, and New Hampshire. However, other specialized CDC datasets are also affected by differences even among states that do respond; some states report some demographic elements while others don't.

For example, not all states count or report the race or ethnicity of the aborting woman, and those that do may not report it in the same way (that is, reporting race but not ethnicity). CDC estimates of Black and Hispanic abortions are thus based on data from just thirty states and the District of Columbia.

Racial and ethnic data are missing not only from California, which has a high minority population, but also from other major states like New York, Illinois, Pennsylvania, and Georgia.

Still, based on the state data it does have, the CDC reports that Black American women accounted for 33.6% of the abortions the CDC measured in 2018.

Where the CDC knew the ethnicity of the aborting woman in 2018, Hispanic women represented about 20% of all abortions.

To put this in context, the U.S. Census bureau estimates that Blacks made up 13.4% of the nation's population in 2019 and Hispanics 18.5%. Even if adding to these the 2.8% of the population the census identified as from two or more races, **it still leaves us with the two largest minorities accounting for just about a third of the population but more than half of the abortions performed in the U.S.**

Abortion rates and ratios also reflect this racial disparity. Non-Hispanic Black women have an abortion rate 3.4 times higher than white women and an abortion ratio 3 times higher than white women.

Hispanic women had an abortion rate 1.7 times and an abortion ratio 1.4 times that of their white counterparts, according to the CDC.

# UNITED STATES ABORTION NUMBERS

Most of the demographic statistics cited so far are pretty much in line with what has been reported in the past, most abortions are to unmarried women in their twenties, many who have already had abortions or had previously given birth, an overrepresentation of minorities, etc. But data on gestational age and abortion method expose some concerning trends.

## **Growth in Chemical Abortions**

The CDC says most abortions in 2018 were performed in the first trimester, as it has been the case for many years. In 2018, 92.2% of abortions reported to the CDC occurred at 13 weeks gestation or less.

Of course, this leaves, even by the CDC minimal counts, tens of thousands of abortions performed on babies in the second or third trimesters. These are the later term abortions the media likes to pretend don't exist.

There has been a shift, nevertheless, particularly in the past twenty years, to abortions performed earlier and earlier in the first trimester. Current figures for 2018 show more than three quarters (77.7%) of abortions were performed at nine weeks gestation or less. More than four in ten (40.2%) are performed at six weeks or earlier.

For comparison, in the CDC's report from twenty years ago (1998 Abortion Surveillance), 75.7% of abortions were performed at ten weeks or less (the CDC grouped weeks together differently at that point). Just 18.8%, less than half the current 40.2%, were performed at six weeks gestation or less.

The explanation for this shift can be seen in another set of data from the CDC and a quick recounting of history.

The "abortion pill" RU-486, also known as mifepristone, was first approved for use in the United States in September of 2000. Originally, its use was supposed to be limited to women no more than seven weeks pregnant, measured from a woman's last menstrual period. But bending to pressure from the abortion industry, President Obama's Food and Drug Administration (FDA) allowed its use up to ten weeks in March of 2016.

Though the number of chemical abortions began to rise slowly, the CDC now says that chemical abortions (or as it puts them, "medical" abortions) running up through nine weeks and 6 days account for 38.6% of all abortions where procedure was identified.

They account for 54.9% of abortions performed at six weeks or less, which explains the CDC's rising figure of early abortions mentioned earlier.

The CDC says that the number of "early medical abortions" reported to them rose 120% from 2009 to 2018.

On top of that, the CDC says an additional 1.4% of "medical" abortions took place at some point greater than nine weeks.

# UNITED STATES ABORTION NUMBERS

That 1.4% likely reflects the fact that despite the official government protocol, abortionists have in the past prescribed their use past the recommended cutoff date.<sup>2</sup>

In any case, both the CDC's abortion method and gestation data document a significant change in the timing of abortions and the way they have been performed over the past two decades. If the abortion industry continues to promote these and to press the government to further loosen distribution requirements to allow online sales and at-home use, these numbers might keep on increasing.

It seems likely that this growth in chemical abortions amidst other long-term declines may be a dominant factor in the recent slight increase seen in abortions, abortion rates, and abortion ratios recorded by the CDC for 2018.

## **The Empire Strikes Back?**

Anyone who thought that the abortion industry would stand idly by while their empire crumbled — while states were passing laws holding them in check, pro-life pregnancy centers were offering their potential clients better life preserving alternatives, and major abortion chains were being defunded — was probably overly optimistic.

Abortion advocates have seen this decline in abortions coming for several decades and have taken steps to shore up their industry. They have rebuilt their customer base, constructed new megaclinics, heavily promoted chemical abortions, and fought pro-life laws in the courts and legislatures.

The CDC's latest data shows us both that years of pro-life education, legislation, outreach, and private assistance have had a long term impact, but also that counter efforts by the abortion industry may be starting to blunt or even reverse those trends.

Abortions, abortion rates, and ratios are slightly up in their latest figures, but many moms and their babies have already been spared over the last three decades because of the tireless efforts of pro-lifers.

But this recent report shows us that our work is far from over.

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*[2] Though, in theory, these could involve other drugs, chemical methods using urea, oxytocin, or prostaglandins would likely be counted as "intrauterine instillation" procedures, for which the CDC has a separate category.*

# THE HYDE AMENDMENT

## Background and History



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

### A Brief History of the Hyde Amendment

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

1. Michael J. New, Ph.D., *Hyde @ 40 ANALYZING THE IMPACT OF THE HYDE AMENDMENT* ([https://s27589.pcdn.co/wp-content/uploads/2016/09/OP\\_hyde\\_9.28.3.pdf](https://s27589.pcdn.co/wp-content/uploads/2016/09/OP_hyde_9.28.3.pdf))

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

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



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

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

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

There is abundant empirical evidence that where government funding for abortion is not available under Medicaid or the state equivalent program, at least one-fourth of the Medicaid-eligible women carry their babies to term, who would otherwise procure federally-funded abortions. Some pro-abortion advocacy groups have claimed that the abortion-reduction effect is substantially greater – one-in-three, or even 50 percent<sup>6</sup>

## What the Hyde Amendment Does (and Does Not) Cover

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

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

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

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

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

# THE HYDE AMENDMENT

The current Hyde Amendment text reads in part<sup>7</sup>:

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

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

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

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

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

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

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

# THE HYDE AMENDMENT

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

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

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

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

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

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

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

# THE EQUAL RIGHTS AMENDMENT

## The Pro-Abortion Movement's Constitutional Stealth Missile

During 2021, many groups and political figures who champion “abortion rights” will intensify their ongoing campaign to air-drop into the U.S. Constitution a provision that they believe, and pro-lifers fear, could be used to entrench and expand a constitutional “right” to abortion — the Equal Rights Amendment (ERA).

This battle will involve all three branches of the federal government.

- The Biden-Harris Administration is expected to assert that the ERA — submitted to the states by Congress in 1972 with a seven-year ratification deadline — has been ratified and is already part of the Constitution, *or* that Congress can make it so with a resolution passed by simple majority votes. Either of those positions would contradict not only the legal position of the Justice Department under the Trump-Pence Administration (and legal positions taken by earlier administrations), but also much past constitutional amendment history, long-past Supreme Court rulings, and even 2020 statements by the late Justice Ruth Bader Ginsburg.
- A federal judge in Washington, D.C., is already considering a lawsuit filed by the Democratic attorneys general of Virginia, Illinois, and Nevada, who insist that the ERA is already part of the Constitution (*Virginia v. Ferriero*). The Democratic attorneys general claims have been contested not only by the Justice Department (which may soon modify that stance), but by five anti-ERA states. Whatever action this judge takes, the constitutional disputes surrounding the ERA's status are likely to reach higher courts during the next year or two, and may ultimately be decided by the U.S. Supreme Court.
- In an attempt to influence the courts, during 2021, the House of Representatives is likely to pass an unconstitutional resolution that, by simple majority vote, purports to remove the 1979 ratification deadline. For the first time, that measure is also likely to come to the floor of the U.S. Senate, with the outcome not entirely predictable.

“The ERA is a stealth missile with a legal warhead that could be used to attack any federal, state, or local law or policy that in any way limits abortion — abortion in the final months, partial-birth abortion, abortions on minors, government funding of abortion, and conscience-protection laws,” said Douglas D. Johnson, who directed National Right to Life’s ERA-related efforts during his years as the organization’s Federal Legislative Director (1981-2016), and who continues to do so today as National Right to Life Senior Policy Advisor. “Pro-abortion advocates failed under the constitutional amendment process provided in Article V of the Constitution — the ERA expired unratified over 40 years ago — so now they are attempting to achieve their goal by brazenly political means, hoping to cow the courts into ignoring the flimsiness of their constitutional claims.”

## The ERA-Abortion Connection

National Right to Life has opposed the ERA for decades, recognizing that the ERA language proposed by Congress in 1972 could and likely would be construed to invalidate virtually all limitations on abortion, and to require government funding of abortion. In decades past such objections were often publicly rejected by ERA advocates, who often derided assertions of an ERA-abortion link as a “scare tactic” and even “a big lie.” But in recent years, an increasing number of prominent pro-abortion advocates have dropped that pretext, and now openly proclaim that the ERA is needed precisely to reinforce and expand “abortion rights.”

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

The National Organization for Women has circulated a monograph on the ERA that makes numerous sweeping claims about its hoped-for pro-abortion legal effects — stating, for example, that “an ERA — properly interpreted — could negate the hundreds of laws that have been passed restricting access to abortion care . . .”

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.’”

David Crary, a national AP reporter, wrote in a January 21, 2020 story, “Another subplot in this year’s abortion drama involves the Equal Rights Amendment... 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.”

Pete Williams of *NBC News* reported (January 30, 2020), “Three states urged a federal judge Thursday to declare that the proposed Equal Rights Amendment is now part of the U.S. Constitution...The ERA has been embraced by advocates of abortion rights. NARAL Pro-Choice America has said it would ‘reinforce the constitutional right to abortion’ and ‘require judges to strike down anti-abortion laws.’ Abortion opponents agree... ‘It would nullify any federal or state restrictions, even on partial-birth or 3rd-trimester abortions,’ [said] National Right to Life.”

*The Daily Beast* reported that Jennifer Weiss-Wolf, vice president of the Brennan Center for Justice), said: “Both the basis of the privacy argument and even the technical, technological underpinnings of [*Roe*] always seemed likely to expire.” ... “Technology was always going to move us to a place where the trimester framework didn’t make sense.” ... “If you were rooted in an equality argument, those things would not matter.”



# THE EQUAL RIGHTS AMENDMENT

[A factsheet containing many such recent quotes from prominent pro-abortion groups, footnoted, may be accessed here:

[www.nrlc.org/uploads/era/ERA-AbortionQuotesheet3-5-20.pdf](http://www.nrlc.org/uploads/era/ERA-AbortionQuotesheet3-5-20.pdf)

Moreover, ERAs to state constitutions that are virtually identical to the proposed federal ERA actually have 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, entirely on the basis of the state ERA, in a lawsuit brought by affiliates of Planned Parenthood and NARAL. At this writing, the Women's Law Project, in alliance with Planned Parenthood, is advancing a lawsuit in the Pennsylvania courts arguing that a limitation on state funding of elective abortion violates the state ERA. The groups have asserted that a 1986 state supreme court decision that held otherwise should be overturned as "contrary to a modern understanding" of ERA.

In 1983 and since, National Right to Life has said it will strongly oppose 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.

In 2021, National Right to Life will again express to members of Congress the position it conveyed in an early 2020 letter: "In our communications with our members, supporters, and affiliates nationwide, a vote in favor of this resolution [purporting to remove the ratification deadline in the 1972 ERA resolution] will be accurately characterized as a vote in favor of inserting language into the U.S. Constitution that could invalidate any limits whatsoever on abortion, including late abortions, and to require government funding of abortion."

## Short History of the 1972 ERA

Various versions of the Equal Rights Amendment were considered in Congress for decades before one finally won the necessary two-thirds approval in the House and Senate in 1972 — but only after proponents had reluctantly accepted a seven-year ratification deadline. The deadline — as for every constitutional amendment proposed since 1960, including four that were adopted — was placed in the Proposing Clause (which is not a "preamble," but a constitutionally required element of a constitutional amendment submission).

As the March 1979 deadline approached, the ERA was three states short of the required 38 state ratifications — and five of the states that had ratified during an initial rush had rescinded their ratifications. In 1978, Congress passed a resolution — by simple majority votes — that purported to extend the deadline for 39 months. Many members of Congress, and many constitutional experts, criticized the deadline extension as clearly unconstitutional. The only federal court to consider the matter later ruled that the deadline extension was unconstitutional

(and that rescissions were valid), but no additional states ratified during the 39-month pseudo-extension, so in 1982 the Supreme Court declared that the entire controversy was moot. The 1972 ERA was dead.

In 1983, the top priority of the Democratic majority leadership of the U.S. House of Representatives, recognizing that the 1972 ERA was dead, made restarting the constitutional amendment process a top priority. They were stunned when the start-over ERA (identical in language to the 1972 ERA) went down in 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.

However, in 1992, the Justice Department issued an opinion that the “Congressional Pay Amendment” (CPA) had been ratified, even though the final ratifying state legislatures adopted their ratification resolutions 203 years after Congress had submitted the proposal to the states. Both houses of Congress passed resolutions stating the same conclusion. However, no court has ever reviewed the question, or ruled that this so-called “27th Amendment” is actually part of the Constitution.

Even if the CPA was indeed validly ratified in 1992, it has little relevance to the ERA, since the CPA had no deadline attached, and no state had rescinded its ratification. Still, ERA advocates seized on the claimed ratification of the CPA to concoct what they called the “three-state theory,” which asserted that the 1972 ERA was still a candidate for ratification. Beginning in 1994, “ratification” resolutions were proposed repeatedly in legislatures in the 15 states that had never ratified the ERA. From 1994 through 2016, none of those attempts was successful – with pro-life opposition in many instances decisive. Finally, in 2017, the Nevada legislature adopted such a “ratification,” followed by Illinois in 2018 and Virginia in January 2020.

## **THE EXECUTIVE BRANCH:**

### **What Occurred in 2020, and What Is Ahead**

When the Second Session of the 116th Congress convened on January 3, 2020, ERA proponents claimed that they needed “just one more state” in order for the ERA to become part of the Constitution. This claim, while widely accepted at face value by the news media, actually was very dubious.

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

However, in the case of the ERA, the documents that had been submitted by Nevada and Illinois purported to ratify a proposal that, by its own explicit terms, had expired in 1979.

# THE EQUAL RIGHTS AMENDMENT

Moreover, five of the states that had ratified had formally rescinded their ratifications, and all had done so before that 1979 deadline.

Faced with those impending legal issues, the Archivist in 2019 sought guidance from the Department of Justice Office of Legal Counsel (OLC), which advises the entire Executive Branch on major legal issues (just as a predecessor Archivist had done, faced with a different set of ratification issues in 1992 with respect to the Congressional Pay Amendment).

On January 6, 2020, the OLC issued a 38-page legal memo that Congress had power to include a deadline in a constitutional amendment resolution before submitting it to the states, and that the ERA had expired unratified in 1979. The opinion held that neither state legislatures nor Congress have power to resurrect an expired amendment, and once Congress submits a constitutional amendment proposal to the states, its role has ended — it may not retroactively modify that proposal, the opinion argued. Taking note of proposals in Congress that purported to retroactively “remove” the deadline, the OLC opinion said that a later Congress lacks the power to act retroactively in this manner, just as the current Congress lacks the power to override a veto by President Carter.

The Archivist announced that he would “abide by the OLC opinion, unless otherwise directed by a final court order.”

On January 15, 2020, the Virginia legislature approved a pseudo-ratification resolution, and ERA advocates loudly proclaimed that this meant that all requirements for ratification of the ERA had been met — a claim that was, again, uncritically accepted and amplified by many organs of the news media, despite its dubious factual foundation.

**After January 20, 2021, the legal position of the Executive Branch will undergo a marked shift. In 2020, the Biden-Harris campaign said that if elected, “Biden will proudly advocate**

**for Congress to recognize that 3/4 of states have ratified the amendment and take action so our Constitution [includes ERA].” This statement is somewhat ambiguous as to which of the two conflicting “ERA is alive” legal theories the Biden Administration will formally embrace. (Is the ERA already part of the Constitution, because deadlines are**

**BIDEN HARRIS**

## THE BIDEN AGENDA FOR WOMEN

As President, Biden will work with advocates across the country to pass the Equal Rights Amendment (ERA) so women's rights are once and for all explicitly enshrined in our Constitution. Biden co-sponsored the ERA nine times. As President, he will work with advocates across the country to enshrine gender equality in our Constitution. Now that Virginia has become the 38th state to ratify the ERA, Biden will proudly advocate for Congress to recognize that 3/4th of states have ratified the amendment and take action so our Constitution makes clear that any government-related discrimination against women is unconstitutional.

January 15, 2021 screenshot from [www.joebiden.com/womens-agenda](http://www.joebiden.com/womens-agenda)

unconstitutional? Or is the ERA not yet part of the Constitution, but can be made so through a retroactive legislative exercise in Congress?) At a minimum, it guarantees that the Biden-Harris Administration will endorse a congressional resolution that purports to “remove” the deadline — and to do so without the two-thirds votes that are always required when Congress exercises its constitutional amendment authority under Article V of the Constitution.

## **THE JUDICIAL BRANCH: What Occurred in 2020, and What Is Ahead**

Even before the Virginia legislature adopted its pseudo-ratification measure on January 15, 2020, federal lawsuits had been filed by both ERA opponents (in Alabama) and supporters (in Massachusetts). However, those two actions eventually were dismissed by federal district judges on procedural grounds (although either or both might be revived in the future).

The main and ongoing ERA-related litigation is a lawsuit (*Virginia v. Ferriero*) filed against the Archivist on January 30, 2020, by the attorneys general of Virginia, Illinois, and Nevada, in the federal district court in the District of Columbia, which was assigned to Judge Rudolph Contreras, an appointee of President Obama. The claim of the three Democratic attorneys general is that Article V of the Constitution, which governs constitutional amendments, does not mention deadlines, and that the deadline that Congress included in the 1972 ERA resolution was therefore unconstitutional. They also assert that rescissions are not allowed. Under this theory, once Congress proposes a constitutional amendment, that proposal must remain available for ratification forever, yet no state may ever change its mind and withdraw its approval.

Judge Contreras has allowed attorneys general of five “anti-ERA” states (AL, LA, NE, SD, TN) to become “intervenor-defendants” in the case. Three of these intervening states (NE, SD, TN) had rescinded their ratifications. The intervening states argue that the ratification deadline was valid and immutable; that rescissions were valid; and that even without an explicit deadline, there is an implicit requirement that a constitutional amendment be ratified within a reasonable period of time (this last position finding support in two early 20th century Supreme Court opinions).

Throughout 2020, the Justice Department has defended the position that the 1979 ERA deadline was valid. The Justice Department has not taken a position on rescissions; if the ERA died in 1979, then it is long dead with or without the five rescissions. (If, however, the courts were to ultimately decide that the deadline was unconstitutional, or that it could be retroactively changed by Congress, then the courts would also have to confront the rescissions issue as well. While it has been little noted by news media, claims by ERA advocates that rescissions are unconstitutional are inconsistent with positions advocated by various Democratic-aligned interest groups, such as labor unions, in closely related contexts.)

# THE EQUAL RIGHTS AMENDMENT

In *Virginia v. Ferriero*, on June 29, 2020, four law professors (Erwin Chemerinsky, Noah Feldman, Reva Siegel, and Julie C. Suk) filed a friend-of-the-court brief “in support of neither party,” which advanced a legal theory different from that argued by the Democratic attorneys general. The professors argued that Congress is the body that should resolve “disagreements” about ratification, that Congress could change the deadline, that the status of the ERA is a “political question,” and that the courts should stand aside, at least at this stage.

Regardless of how Judge Contreras rules regarding the validity of the deadline, the validity of rescissions, and/or the role of Congress (if any) to decide such matters by simple majorities, it is likely that higher courts, and ultimately the U.S. Supreme Court, will have opportunity to come to grips with and resolve these issues. At this writing (January 15, 2021), the case has been thoroughly briefed, but oral arguments have not yet been scheduled, and it is not clear how soon a ruling may be handed down.

## THE LEGISLATIVE BRANCH: What Occurred in 2020, and What Is Ahead

After the Virginia legislature adopted its ERA “ratification” resolution on January 15, 2020, the Democratic leadership of the U.S. House of Representatives announced that it would quickly take up a resolution purporting to remove the ratification deadline retroactively (H.J. Res. 79).

However, on February 10, 2020, advocates for the deadlines-don’t-matter campaign hit a serious bump. Justice Ruth Bader Ginsburg, long a champion of the ERA, was asked about the issue at a public event at Georgetown University Law Center. Justice Ginsburg gave a response that implicitly recognized the validity of both the deadline and the power of states to rescind:



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

***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”?***



# THE EQUAL RIGHTS AMENDMENT

Despite Justice Ginsburg’s admonition, on February 13, 2020, the House of Representatives passed H.J. Res. 79, purporting to remove the ratification deadline. The measure passed by a vote of 232-183 – with all voting Democrats in support, but only five out of 187 voting Republicans. Subsequently, the measure was referred to the Senate Judiciary Committee, which took no action on it. Therefore, the pro-ERA side must begin again in the new 117th Congress, which convened on January 3, 2021.

At this writing (January 15, 2021), Congresswoman Jacki Speier (D-Calif.) has indicated that she will soon introduce a “deadline removal” resolution identical to H.J. Res. 79. There is little doubt that it will pass the House again, at a time of the Democratic leadership’s choosing. Its prospects in the U.S. Senate are far cloudier.

As of January 20, 2021, the U.S. Senate will have a bare Democratic majority (with the tie-breaking vote of Vice President Kamala Harris). This makes it likely that the “deadline removal” measure will reach the Senate floor sometime during the 117th Congress. But in view of its manifest constitutional defects, and the heavy pro-abortion cargo that the underlying ERA text carries (as discussed above), its approval by the Senate is far from a foregone conclusion.

It should be noted the level of support for the ERA in the House of Representatives has dropped precipitously over a period of decades, and is likely to drop even further on the next go-around:

- House approval of ERA resolution, Oct. 12, 1971: 354-24 (94% of voting members)
- House failure to approve identical start-over ERA, Nov. 15, 1983: 278-147 (65% of voting members, short of two-thirds)
- House approval of purported “deadline removal” resolution, Feb. 13, 2020: 232-183 (56% of voting members)

## Additional Resources

Additional historic documentation on the ERA-abortion connection can be found on the National Right to Life website archive at [www.nrlc.org/federal/era](http://www.nrlc.org/federal/era)

National Right to Life Senior Policy Advisor Douglas D. Johnson has been extensively involved in the legislative and legal disputes surrounding the Equal Rights Amendment since 1983. He can be reached through the National Right to Life Media Relations Department at 202-626-8825, [mediarelations@nrlc.org](mailto:mediarelations@nrlc.org)

[@ERANoShortcuts](https://twitter.com/ERANoShortcuts) is a recommended Twitter account dedicated exclusively to tracking legal and political developments pertaining to the federal Equal Rights Amendment, and to challenging misinformation about the history of these matters.

# PLANNED PARENTHOOD: More Abortions, Less Care

## Pushing Abortion During a Pandemic

WHEN YOU  
THINK **PLANNED  
PARENTHOOD,**  
THINK  
**ABORTION!**

national  
RIGHT TO LIFE  
www.nrlc.org

Many health care workers have acted heroically during the pandemic, bravely putting their own welfare and safety on the line to save the lives of others. Planned Parenthood bills itself as one of those noble “health care providers,” but while others were focused on saving lives during the pandemic, the nation’s top abortion provider and promoter continued to be fixated on taking them.

An advisor to former President Bill Clinton once said, “Never let a good crisis go to waste.” These are words Planned Parenthood has clearly heeded.

What did it do while the virus raged?

Planned Parenthood did everything in their considerable power to keep abortion clinics open. Planned Parenthood used the pandemic as an opportunity to expand the abortion empire with telemedicine.

Planned Parenthood tried to take advantage of the circumstances to grab emergency COVID-19 relief funds.

And of course, Planned Parenthood continued to try and get political supporters of theirs elected to office, to keep government funds flowing.

### Open for “Essential” Business

Granted, everyone was on unsure footing when the virus first hit, not really sure what was safe or how best to react. A lot of businesses shut down, some of their own initiative, others by government mandate.

Many smaller, independent abortion clinics suddenly faced increased expenses on cleaning and personal protective equipment, new social distancing mandates that reduced the number of patients that could be seen, as well as individual health

PLANNED PARENTHOOD  
ABORTION IN A PANDEMIC

concerns of staffers. Those clinics struggled to survive. Some limped by, barely staying open, some closed, unlikely to reopen again (*TIME*, December 2, 2020).

Not so for the nation's largest abortion provider. Planned Parenthood affiliates all over the country took the occasion to send out messages reminding women they were still open and ready for business.

## **New York**

When New York Gov. Andrew Cuomo issued an order in March that all “non-essential” businesses were to shut down, Meera Shah, the chief medical officer for Planned Parenthood's locations in Long Island, West Chester, and Rockland (suburbs of New York City, hit hard by the virus) made a statement to Buzz Feed. She said “Our doors will stay open because sexual and reproductive health care is extremely important, and we have to ensure access to it.”

Did that include abortion? Absolutely — laying down a marker against any who assumed abortions to be elective and thus non-essential. Shah continued, “Pregnancy-related care, especially abortion care, is essential ... especially now when there is so much insecurity around jobs and food and paychecks and childcare” (refinery29.com, March 23, 2020).

While several of its large abortion clinics did continue to see clients, other of Planned Parenthood's New York centers did, in fact, close temporarily. They said they were laying off staff because of the pandemic's strain on resources. The (Albany) Times Union reported that these included clinics in the Bronx, Glen Cove, Goshen, Hornell, Kingston, Massapequa, Monticello, Oneida, Rome, Staten Island, and Watkins Glen.

However, note that just one of those clinics (the Bronx) had clearly been a full-service abortion clinic, offering both surgical and chemical abortion. Even in that case there were two other Planned Parenthood clinics within ten miles also offering both abortion methods that did stay open.

A spokesperson told the *Times Union* the centers would reopen once the pandemic and risk of infection receded (*Times Union*, April 8, 2020). Some of those had yet to re-open as late as mid-December.

## **Pennsylvania**

Planned Parenthood's Pennsylvania affiliate, PP Keystone, issued a similar statement to the one put out by the New York affiliate — “our doors remain open... we are committed to meeting all the needs of our current and new patients” (PP Keystone, COVID-19 Information, March 6, 2020).

At the same time, it declared that it wanted to “serve as many patients as possible over the phone or over a secure videoconference.” Patients would be seen in person “when necessary,”

# PLANNED PARENTHOOD: ABORTION IN A PANDEMIC

but were not to bring partners or children into the office with them. They suggested that those with any flu like symptoms stay home, reschedule, and contact their local health department.

Abortion? According to WHTM's ABC 27 News, Keystone announced that its abortion performing facilities would remain open "for abortion services only." ABC 27 also heard from Planned Parenthood's Southeastern Pennsylvania affiliate, who said they had temporarily closed their centers but wanted to make sure people understood the closure "does NOT include their abortion services" (ABC 27, March 25, 2020). Thus two other PPFA affiliates kept the doors open for abortion patients but discouraged others patients from visiting.

## Washington, D.C.

The prioritizing of abortion was made clear by Planned Parenthood's Washington, DC affiliate. The Washingtonian magazine's Marisa M. Kashino wrote that, in the capital region, abortion had been deemed "essential" and noted that Planned Parenthood "clinics here are taking extra steps, including scaling back other services, to ensure that women can continue to safely access the procedure" (*The Washingtonian*, April 1, 2020).

Laura Meyers, CEO for the DC affiliate, told the Washingtonian that her three local health centers were, for the time being, only allowing patients with "time-sensitive needs" to make in-person appointments. That meant, Meyers said, such things as "treating IUDs that are problematic, symptomatic visits [such as treating STDs], *and abortion care*" (italics added).

Making staff and facilities available for other regular services was apparently an issue though, because, Planned Parenthood, like many other legitimate health care providers, was experiencing a shortage of PPE (personal protective equipment).

## Illinois

Another affiliate, Planned Parenthood of Illinois (PPIL), likewise made its agenda specific, closing eleven of its clinics but keeping six of those offering abortions open. They called this a temporary "consolidation" of services, directing patients to the open centers across the state.

"Planned Parenthood of Illinois is taking all necessary precautions to keep our staff and patients healthy and well. This temporary consolidation of services is just one part of that," Dr. Amy Whitaker, Chief Medical Officer at PPIL told the *Chicago Sun-Times*. "Patients will still need family planning services and abortion care during this time, and we are committed to providing it."

Anyone seeking "non-essential services" should reschedule, PPIL, said, while those seeking birth control, dealing with urinary tract infections, could call or do an online visit and get their prescriptions without ever having to come in (*Chicago Sun-Times*, March 19, 2020).

If that didn't make PPIL's priorities clear, even with eleven of its centers still closed for COVID, PPIL proudly announced the opening of another large abortion-performing clinic in Waukegan. That abortion clinic, PPIL admitted, was strategically situated to draw overflow from North Chicago and any patients who might cross the state line from Wisconsin. PPIL described Wisconsin as "a state that poses stringent legal barriers to abortion."

The new Waukegan clinic is geared towards high volume. It has two of what it calls "procedure rooms," five exam rooms, and a parking lot with more than 100 spaces, though it is also accessible by public transportation (*Lake County News-Sun*, 5/12/20).

## Where Things Stand Today

Even as the virus resurges, "Many Planned Parenthood health centers are open and able to provide services, with precautions in place to protect the health and safety of patients and staff," the national organization's website declared. "Some Planned Parenthood health centers have had to reduce hours or suspend walk-in appointments. And some Planned Parenthood health centers have made the difficult decision to close during this time and refer patients to other locations or health care providers."

But they still want to make sure that women know that abortion is still available at Planned Parenthood clinics in most of the country.

"Abortion is still legal in all 50 states in the U.S.," their website relates. "Abortion care is time-sensitive and essential, and nurses and doctors are doing the best they can to continue to provide abortions. If you're trying to schedule an abortion, our Abortion Care Finder can help you find your closest provider — give them a call to make an appointment or for more information." (Planned Parenthood website, 12/17/20)

Is the turn to telehealth a prelude to at-home abortion? The regular mention of consulting patients by phone and seeing others by videoconference by Planned Parenthood spokespeople above is not coincidental. And though one might assume that telehealth applies only to non-abortion patients, that would be wrong.

In April, early on in the pandemic, Planned Parenthood's national office announced that affiliates in all fifty states would be offering services by "telehealth" by the month's end (*Washington Times*, 4/14/20). That in and of itself was not unusual. Many in the health care industry were turning to telemedicine as a way to continue seeing patients during the pandemic. But Planned Parenthood treated this as a way not only to connect to patients old and new, but also to promote its signature product — abortion.

Though services varied from center to center, PPFA said telehealth services would include birth control, hormone therapy, testing and treatment for sexually-transmitted diseases and, in some cases, help in getting pills for an at-home abortion.



# PLANNED PARENTHOOD: ABORTION IN A PANDEMIC

“You may be able to get a medical abortion — the abortion pill — through telehealth,” the Planned Parenthood website advised. “If so, during your telehealth visit, your nurse or doctor will give you all of the information you need to use the abortion pill at home. Then you’ll go to your local health center to pick up the medicines you’ll need. And — depending on the state you live in — you can usually get a medication abortion up to 11 weeks after the first day of your last period” (*Washington Times*, April 14, 2020).

As of mid-December of 2020, the FDA had not authorized online prescription and at-home use of mifepristone, except in limited testing. But Planned Parenthood had exploited that loophole to allow affiliates in Colorado, Minnesota, Montana, New Mexico, Oregon, and Washington state to offer “telabortions” as part of a “study” that abortion-pill promoter Gynuity was conducting in several states.

According to its website “PPFA joined the American Medical Association (AMA), the American Academy of Family Physicians (AAFP), and the American Academy of Pediatrics (AAP), and other leading health care organizations in signing on to an *amicus brief* in support of the lawsuit” to force the U.S. Food and Drug Administration (FDA) to roll back Risk Evaluation and Mitigation Strategy (REMS) regulations that required patients to meet a health care provider in person and pick up abortion pills at the clinic in order to help ensure their safety.

The suit argued that such regulations were “unnecessary” and “burdensome” during the national COVID-19 emergency, but their clear aim was to get rid of the requirements entirely so that mifepristone could be readily prescribed online and delivered by mail even after the virus is vanquished.

## **Staying Viable with Government Assistance**

Researchers looking at phone tracking data have theorized that abortion clinic traffic fell off considerably during the initial phases of the pandemic ([www.nationalrighttolifenews.org/2020/11/study-says-coronavirus-reduced-clinic-traffic-and-abortions](http://www.nationalrighttolifenews.org/2020/11/study-says-coronavirus-reduced-clinic-traffic-and-abortions)). That may ultimately prove to be the case.

However, we know that Planned Parenthood was reserving a lot of its in-person slots for abortion patients (meaning that the patients still visiting the clinics were more likely to be abortion patients). Moreover, there was at least one affiliate (Colorado clinics with the Planned Parenthood of the Rocky Mountains affiliate) reporting an increase in abortions due to women coming in from out of state (KDVR, May 5, 2020).

Planned Parenthood’s deep pockets (\$1.6 billion in revenues in its 2018-19 Annual Report) and its aggressive efforts to keep its profitable abortion business open did not prevent the group from seeking special government assistance for businesses devastated by the coronavirus. At least 38 of Planned Parenthood’s affiliates shared \$80 million in forgivable loans from the government’s Small Business Administration’s Paycheck Protection Program designed to help avert layoffs during the pandemic (CBS News, May 22, 2020).

# PLANNED PARENTHOOD: ABORTION IN A PANDEMIC

PPFA Vice President Jacqueline Ayers told Politico that the loans ensured that health centers could retain staff and continue to provide patients with “essential, time-sensitive sexual and reproductive health care” during this crisis. (*Politico*, July 6, 2020)

Despite unwelcome publicity and government efforts to have Planned Parenthood return the money, saying the abortion giant did not really meet the program requirements, some affiliates outright refused to return the funds (Reform Austin, August 4, 2020). There was no indication that any had returned some or all of the money by early December (*Washington Post*, December 2, 2020).

Of course, Planned Parenthood was not so poor as to give up its usual political advocacy. As early as May, the Planned Parenthood Action Fund was launching a \$5 million ad campaign in battleground states like Arizona, Colorado, Georgia, Iowa, Michigan, North Carolina, Nevada, Pennsylvania, Tennessee, and Wisconsin highlighting moves made in those states to either advance or impede “reproductive healthcare” during the pandemic (NBC News, 5/14/20). Astute observers will recognize many of those states where the presidential election results turned out to be the closest.

Just two months later, the Planned Parenthood Action Fund used the debate over coronavirus relief funds to launch a [unspecified] “Six-Figure Paid Ad Campaign” targeting Republican Senators in tough races: Sens. Mitch McConnell of Kentucky, Steve Daines of Montana, John Cornyn of Texas, Joni Ernest of Iowa, Susan Collins of Maine, Cory Gardner of Colorado, Thom Tillis of North Carolina, and Martha McSally of Arizona. (Josh Hawley of Missouri was also targeted, but his seat was not up for election in 2020). Fortunately, pro-life Republicans were able to retain all but two of those seats (Colorado and Arizona), but Planned Parenthood was clearly invested in using the COVID crisis to win votes for their side.

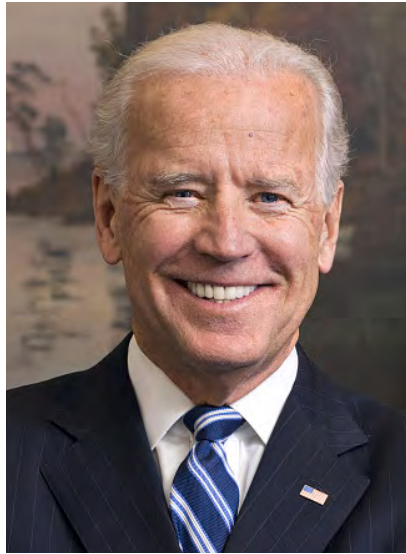
## Who’s Side Are They On?

While other clinics and other industries were shutting down, scrambling to figure out how they would stay in business, Planned Parenthood was boldly declaring they were still open. They claimed their abortion business was “essential” to a country dealing with a frightening and devastating health crisis. They used the occasion to adapt, to publicize, and advocate for telemedicine chemical abortions where patients could meet with Planned Parenthood online for screening and counseling, and have their abortion pills shipped to their home by mail.

Despite being the biggest, richest provider in the abortion industry, Planned Parenthood affiliates sought coronavirus relief funds to help keep their affiliates financially afloat. And then they spent millions to try to sway the election in favor of pro-abortion Democrats who would back their deadly agenda.

You’d think people that had suffered through one of the most deadly pandemics in history would have a new appreciation for the preciousness of human life. But that’s never been the top priority at Planned Parenthood.

# JOE BIDEN & KAMALA HARRIS: Solidly Pro-Abortion



On the issue of abortion, it is clear from their records, that there is nothing moderate about the positions of President Joe Biden and Vice President Kamala Harris. While Biden began his Senate career telling constituents he was “personally opposed to abortion,” he made clear during the 2019-2020 primary season that he was fully supportive of policies that would allow abortion throughout all nine months of pregnancy, though he was still expressing support for the long-standing Hyde Amendment.

Even that changed in June 2019 when then-Sen. Kamala Harris, as part of her presidential campaign, challenged Mr. Biden’s support for the Hyde Amendment. Within days, the former vice president announced he would no longer support the Hyde Amendment saying, “If I believe health care is a right, as I do, I can no longer support an amendment that makes that right dependent on someone’s zip code.” (NPR, June 6, 2019).

## The 2020 Democratic Party Platform

In 1996, President Bill Clinton ran on a Democratic Party platform that called for abortion to be “less necessary and more rare.” Twenty-four years later, the Democratic Party platform of the Biden-Harris ticket was far more extreme:

**...Democrats believe every woman should be able to access high-quality reproductive health care services, including safe and legal abortion. We oppose and will fight to overturn federal and state laws that create barriers to women’s reproductive health and rights, including by repealing the Hyde Amendment and protecting and codifying the right to reproductive freedom.**

Under the Biden-Harris Administration, we can expect a direct assault on the Hyde Amendment, appointment of judges that would further enshrine *Roe v. Wade* in law, and attempts to pass legislation that would nullify all pro-life laws at the state and federal levels.

JOE BIDEN & KAMALA HARRIS:  
SOLIDLY PRO-ABORTION

# JOE BIDEN & KAMALA HARRIS: SOLIDLY PRO-ABORTION

## The Biden Record: Highlights

- From 1973 to 1983, Joe Biden consistently voted in favor of measures that limited the use of federal funds to pay for abortion.
- On March 10, 1982, as a member of the U.S. Senate Judiciary Committee, Biden voted for a constitutional amendment (the Hatch Federalism Amendment, S.J.Res. 10) to overturn *Roe v. Wade*. But notably in 1983, Biden voted against the Hatch-Eagleton Human Life Amendment to the Constitution (S.J.Res. 3) which read simply, “A right to abortion is not secured by this Constitution.”
- From 1983-1989, Biden continued voting for measures, including the Hyde Amendment, limiting federal funding of abortion through government programs.
- In 1993, Biden became a co-sponsor of the so-called “Freedom of Choice Act,” which would have invalidated existing state and federal pro-life laws.
- Biden consistently voted against legislation that would have protected parents’ rights and prevented a minor daughter from being taken across state lines for an abortion without parental notification.

## The Harris Record: Highlights

- As California Attorney General, Kamala Harris supported passage of the so-called “Reproductive FACT Act,” which required pro-life pregnancy centers to inform all clients about state programs that provide abortions. The law was struck by the U.S. Supreme Court in its June 2018 decision in *NIFLA v. Becerra*.
- As senator, Harris consistently voted against all pro-life legislation, including votes against the Pain-Capable Unborn Child Protection Act, which would protect from abortion unborn children capable of feeling pain; and the Born-Alive Abortion Survivors Protection Act, which requires medical treatment for all babies born alive during an abortion.
- As a presidential candidate, Harris said, “if she won the White House, she would require states seeking restrictive abortion laws to first obtain federal approval through the Department of Justice.” (Associated Press May 28, 2019)

Based on their unwavering support for the Democratic Party platform, their extreme votes in the United States Senate, and comments made on the campaign trail, it is clear that the Biden-Harris Administration will fully embrace the agenda of Planned Parenthood, NARAL Pro-Choice America, and the rest of the pro-abortion establishment.

Full documentation about both Joe Biden and Kamala Harris and their records on the life issues is available from National Right to Life.



# FEDERAL POLICY AND ABORTION: A SYNOPSIS



## Overview

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

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

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

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

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



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

On February 25, 2020, fifty- six (56) senators voted to take up the Born-Alive Abortion Survivors Protection Act but 60 votes were required, so the bill did not advance. Additionally, House Republican leadership filed a discharge petition for H.R. 962 on the same legislation in an attempt to force a vote against the wishes of Democrat leadership. The petition fell short of the needed majority of signatures (217), and a similar bill and discharge petition are planned for the 117th Congress. This legislation would enact an explicit requirement that a baby born alive during an abortion must be afforded “the same degree” of care that would apply “to any other child born alive at the same gestational age,” including transportation to a hospital, and applies the existing penalties of 18 U.S.C. § 1111 (the federal murder statute) to anyone who performs “an overt act that kills [such] a child born alive.”

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

Pro-abortion advocacy groups have periodically campaigned for enactment of federal “abortion rights” statutes (e.g., the “Freedom of Choice Act” and more recently the “Women’s Health Protection Act”), and have extracted endorsements of such measures from two presidents (Clinton and Obama), but they have never been able to move such a measure through even one house of Congress.

A number of federal laws generally prohibit federal subsidies for abortion in various specific programs, the best known of these being the Hyde Amendment, which governs funds that flow through the annual federal health and human services appropriations bill. A fuller explanation of the Hyde Amendment can be found starting on page 13. However, as discussed below, the Obamacare health law enacted in 2010 contains provisions that sharply depart from the Hyde Amendment principles, primarily by authorizing federal subsidies for the purchase of private health plans that cover abortion on demand.

# FEDERAL POLICY AND ABORTION

Various federal laws seek to prevent discrimination against health care providers who do not wish to participate in providing abortions (often called “conscience protection” laws), and the Trump administration took numerous actions to enforce these laws.

## Judicial Federalization of Abortion Policy

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

But the most important sentence appears not in the Texas case of *Roe vs. Wade*, but in the Georgia case of *Doe vs. Bolton*, decided the same day. In deciding whether an abortion [after “viability”] is necessary, Blackmun wrote, doctors may consider “all factors – physical, emotional, psychological, familial and the woman’s age – relevant to the well-being of the patient.” It soon became clear that if a patient’s “emotional well-being” was reason enough to justify an abortion, then any abortion could be justified. (See “*Roe* Ruling More Than Its Author Intended,” *Los Angeles Times*, Sept. 14, 2005, [www.nrlc.org/communications/resources/savagelatimes091405](http://www.nrlc.org/communications/resources/savagelatimes091405))

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

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

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

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

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

## **Congressional Action on Federal Subsidies for Abortion**

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

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

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

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

# FEDERAL POLICY AND ABORTION

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

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

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

Some defenders of the Obamacare law originally insisted that this would not really constitute “federal funding” of abortion because a “separate payment” would be required to cover the costs of the abortion coverage. National Right to Life and other pro-life groups dismissed this requirement as nothing more than an exercise in deceptive re-labeling, and as a “bookkeeping gimmick” that sharply departed from the principles of the Hyde Amendment. In the 26 states (plus D.C.) that did not have laws in effect that restrict abortion coverage, over one thousand exchange plans covered abortion, the report found. (See “GAO report confirms elective abortion coverage widespread in Obamacare exchange plans,” [www.nrlc.org/communications/releases/2014/release091614](http://www.nrlc.org/communications/releases/2014/release091614)) Further, in 2021, there are an estimated total of 1,296 available plans in those 26 jurisdictions with no restriction on abortion coverage. Of those plans, an estimated 69% (892 plans) cover elective abortion. In 2020 alone, it is estimated that \$13 billion dollars flowed to plans that cover abortion on demand. See here for more information: [www.obamacareabortion.com/resources](http://www.obamacareabortion.com/resources)

The No Taxpayer Funding for Abortion Act would apply the full Hyde Amendment principles in a permanent, uniform fashion to federal health programs, including those created by the Obamacare law. With respect to Obamacare, this would mean that private insurance plans that pay for elective abortions would not qualify for federal subsidies, although such plans could still be sold through Obamacare exchanges, in states that allow it, to customers who do not receive federal subsidies. The U.S. House of Representatives passed this legislation in 2011, 2014, 2015, and 2017. The U.S. Senate in the 116th Congress voted on this legislation with a vote of 48-47, but 60 votes were required, so the bill did not advance.

## **Federal Subsidies for Abortion Providers**

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

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

## **International Abortion Funding**

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

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



# FEDERAL POLICY AND ABORTION

When President Trump reinstated the Mexico City Policy, now called the Protecting Life in Global Health Program, he also widened its reach. The expanded policy reached a substantially expanded array of overseas health programs, including those dealing with HIV/AIDS, maternal and child health, and malaria, and including some programs operated by the Defense Department. The Biden Administration is expected to again to reverse this policy.

## **Congressional Action on Direct Protection for Unborn Children**

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

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

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

Study of the Court's reasoning in *Gonzales* led many legal analysts, on both sides of the abortion issue, to conclude that the Court majority had opened the door for legislative bodies to enact broader protections for unborn children. In response to the *Gonzales* ruling, National Right to Life developed the model Pain-Capable Unborn Child Protection Act, which declares that the capacity to experience pain exists at least by 20 weeks fetal age, and generally prohibits abortion after that point. As described in the State Legislation section of this report, the National Right to Life model legislation has now been enacted, with slight variations, in 16 states.

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

During the 116th Congress, the Dismemberment Abortion Ban Act was introduced in Congress by Congresswoman Debbie Lesko (R-Ariz.) in the House and Sens. Lankford (R-Okla.) and Rounds (R-S.D.) in the Senate. It is expected to again be introduced in the 117th Congress. The legislation is based on a model state-level bill developed by National Right to Life, which

has been enacted in seven states). The federal bill would prohibit nationally the performance of “dismemberment abortion,” defined as “with the purpose of causing the death of an unborn child, knowingly dismembering a living unborn child and extracting such unborn child one piece at a time or intact but crushed from the uterus through the use of clamps, grasping forceps, tongs, scissors or similar instruments that, through the convergence of two rigid levers, slice, crush or grasp a portion of the unborn child’s body in order to cut or rip it off or crush it.” This prohibition would apply to many applications of the method referred to by abortionists as “dilation and evacuation” (D&E), which currently is the most common second-trimester abortion method, employed starting at about 14 weeks of pregnancy; the method is depicted in a medical illustration here: [www.nrlc.org/abortion/pba/deabortiongraphic](http://www.nrlc.org/abortion/pba/deabortiongraphic).

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

## **Attempts in Congress to Protect “Abortion Rights” in Federal Law**

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

### **The “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.

# FEDERAL POLICY AND ABORTION

The FOCA did win approval from committees in both the Senate and House of Representatives in early 1993, but it died without floor votes in either house when the pro-abortion lobby found, much to its surprise, that it could not muster the votes to pass the measure after National Right to Life engaged in a concerted campaign to educate members of Congress regarding its extreme effects. This episode illustrated that even many lawmakers who endorse “the right to choose” in general terms, recoil when presented with the prospect of voting to endorse legislation to explicitly invalidate many types of state laws that have broad popular support, such as limitations on late abortions, waiting periods, conscience protection laws, and laws prohibiting performance of abortions by non-physicians.

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

In 2013, alarmed by the enactment of pro-life legislation in numerous states, leading pro-abortion advocacy groups again unveiled a proposed federal statute that would invalidate virtually all federal and state limitations on abortion, including various types of laws that have been explicitly upheld as constitutionally permissible by the U.S. Supreme Court. This updated FOCA is formally styled the “Women’s Health Protection Act,” although National Right to Life noted that it would accurately be labeled the “Abortion Without Limits Until Birth Act.” On July 15, 2014, the U.S. Senate Judiciary Committee (then controlled by Democrats) conducted a hearing on the bill, at which [National Right to Life President Carol Tobias presented testimony](#) explaining the radical sweep of the legislation. Following the hearing, the Judiciary Committee took no further action on the bill during the 113th Congress. The legislation is expected to be re-introduced in the 117th Congress and has gathered many co-sponsors in both houses, and may receive legislative action.

## **The “Equality Act”**

On May 16, 2019, the so-called “Equality Act” (H.R. 5) became one of the most pro-abortion pieces of legislation to ever be voted on in the House of Representatives. The legislation was supported by 228 Democrats and 8 Republicans. It was opposed by 173 Republicans.

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

# FEDERAL POLICY AND ABORTION

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

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

National Right to Life Committee strongly opposed passage of H.R. 5. Action on this legislation is expected in the 117th Congress.

# STATE LAWS & ABORTION



*“The place you change America isn’t in Washington. It’s in the states. ... That’s how we’ll change the life debate. It will be at the state level. Different states doing this, making very positive key changes until it can migrate to the federal level. And a court case can get up to the Supreme Court and Roe v. Wade be overturned. Which will ultimately happen. We have to keep pushing at these state levels.”*

-Kansas Governor Sam Brownback  
speaking at the NRLC 2012 Convention

Both NARAL and the Guttmacher Institute provide their own tallies of pro-life state legislation (both proposed and passed). While their numbers differ from National Right to Life’s for a host of reasons, we can agree that the past several years have been excellent years for the pro-life movement in many state legislatures. The aggressive legislative outreach by National Right to Life and its network of state affiliates to save unborn babies and protect their mothers begins with National Right to Life’s Department of State Legislation.

The goal of both National Right to Life and its state affiliates is to shape state legislative proposals that will effectively save lives in such a way that passage is more likely, and which may ultimately give the Supreme Court the opportunity to rethink elements of its abortion jurisprudence (as it has on previous occasions in decisions like *Bellotti v. Baird (II)*, *Planned Parenthood v. Casey*, *Webster v. Reproductive Health Services*, and *Gonzales v. Carhart*).

## **An Altered Abortion Landscape**

Those opposed to protecting innocent unborn children claim there is an altered abortion landscape. They are right in the sense that clearly the landscape has changed. But it’s not because legislators are out of step with public opinion, as pro-abortionists insist, but because they are in step with public opinion.

National Right to Life and its state affiliates have long been the leader in passing meaningful legislation. National Right to Life and its state affiliates have been



# STATE LAWS AND ABORTION

successful in passing laws such as the Partial-Birth Abortion Ban Act, which prohibits the gruesome practice of partially delivering an unborn baby before killing her; the Pain-Capable Unborn Child Protection Act which protects unborn children who are capable of feeling pain from abortion, and the Unborn Child Protection from Dismemberment Act, which protects living unborn babies from being ripped apart limb from limb from a gruesome abortion procedure.

Among the most recent legislative initiatives are laws requiring that information be made available to women that should they change their minds half-way through a chemical abortion, there is a realistic possibility of saving their baby. And don't forget "Prenatal Nondiscrimination Acts" which are intended to prevent eugenic abortions — abortions undertaken because a woman wants a boy rather than a girl or because of race or fetal disability.

With a new legislative session just now beginning, it is not surprising that editorial boards and articles are popping up with increased frequency on the web. Because pro-abortion thought leaders are scared, they want to frighten the public and intimidate legislators.

*Roe* was built on a foundation of lies. Those same lies, and many new ones, have been used to erect a protective wall around *Roe*.

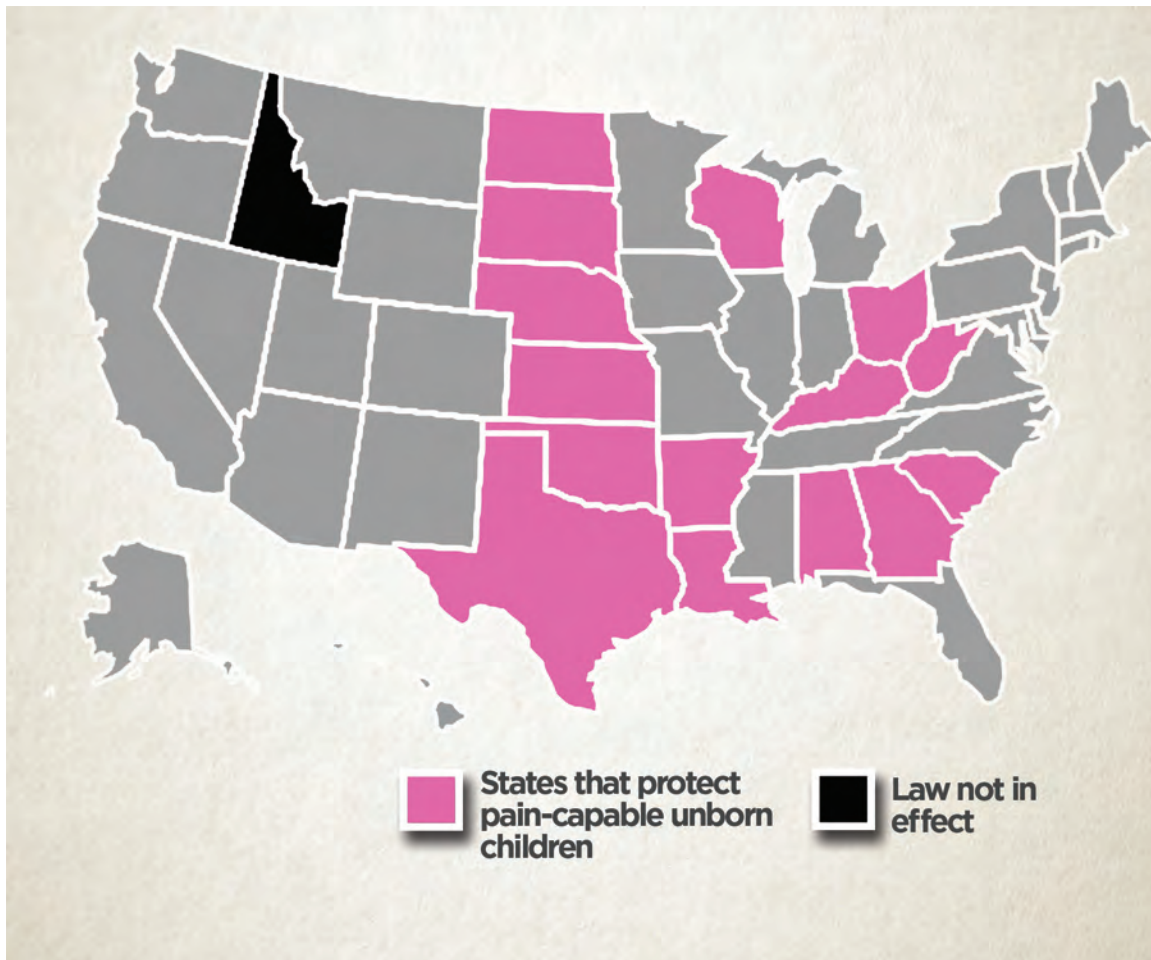
But commonsense protective laws National Right to Life has promoted for decades are slowly chipping away at those lies. Laws like the Pain-Capable Unborn Child Protection Act, The Unborn Child Protection from Dismemberment Abortion Act, Ultrasound laws, Informed Consent laws, Parental Involvement laws, and Unborn Victims of Violence laws—among so many others.

## **Synopsis of State Laws**

The following pages provide a summary of state laws which highlight several types of key legislation enacted by National Right to Life's network of state affiliates over the past 25 years.

These state laws have certainly had an impact on the abortion numbers, as discussed earlier in this report. Several states, including Kansas, Nebraska, South Carolina, and Wisconsin, can track dramatic decreases in their abortion numbers to the enactment of protective pro-life legislation.

## Pain-Capable Unborn Child Protection Act

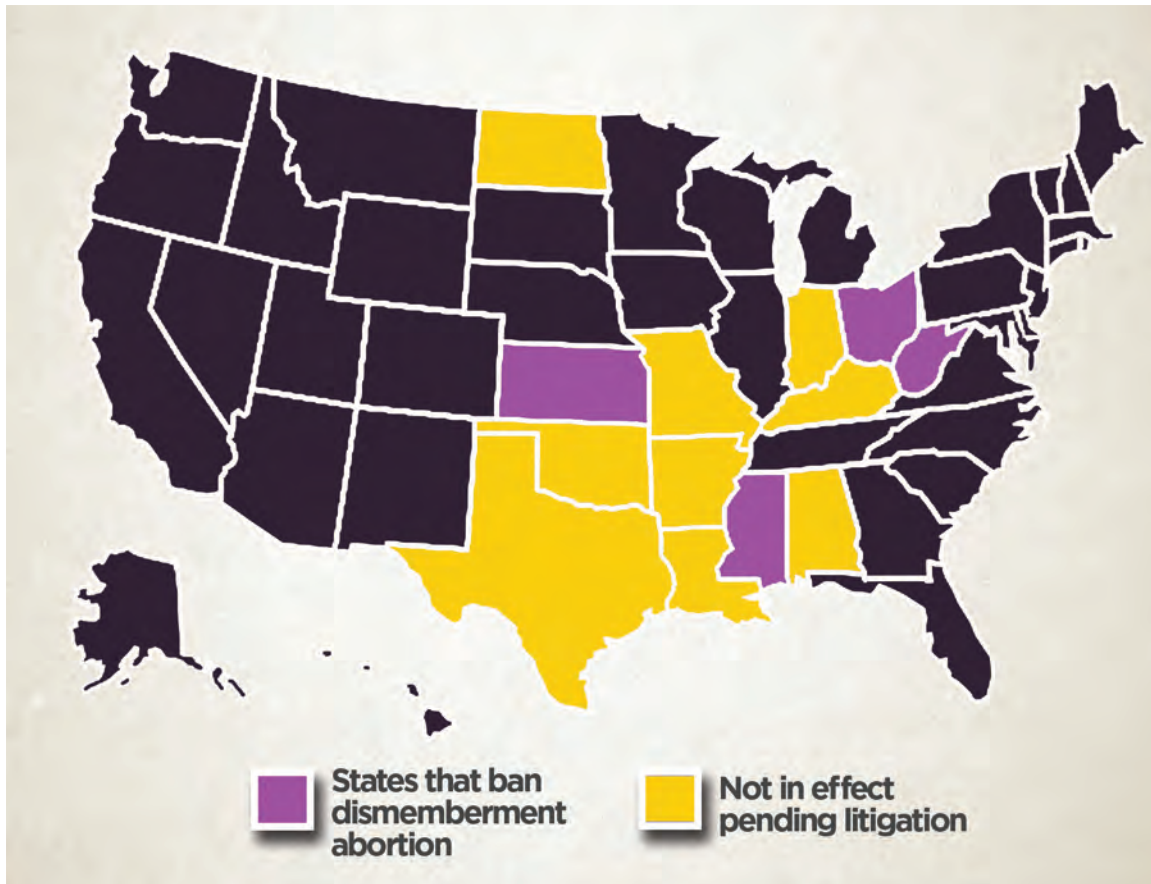


First enacted by the state of Nebraska in 2010, the model Pain-Capable Unborn Child Protection Act, drafted by National Right to Life's Department of State Legislation, is legislation which protects from abortion unborn children who are capable of feeling pain. There has been an explosion in scientific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

States that protect pain-capable unborn children: Alabama, Arkansas, Georgia,\* Idaho,\* Kansas, Kentucky, Louisiana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, West Virginia, and Wisconsin.

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

## Protecting Unborn Children from Dismemberment Abortion



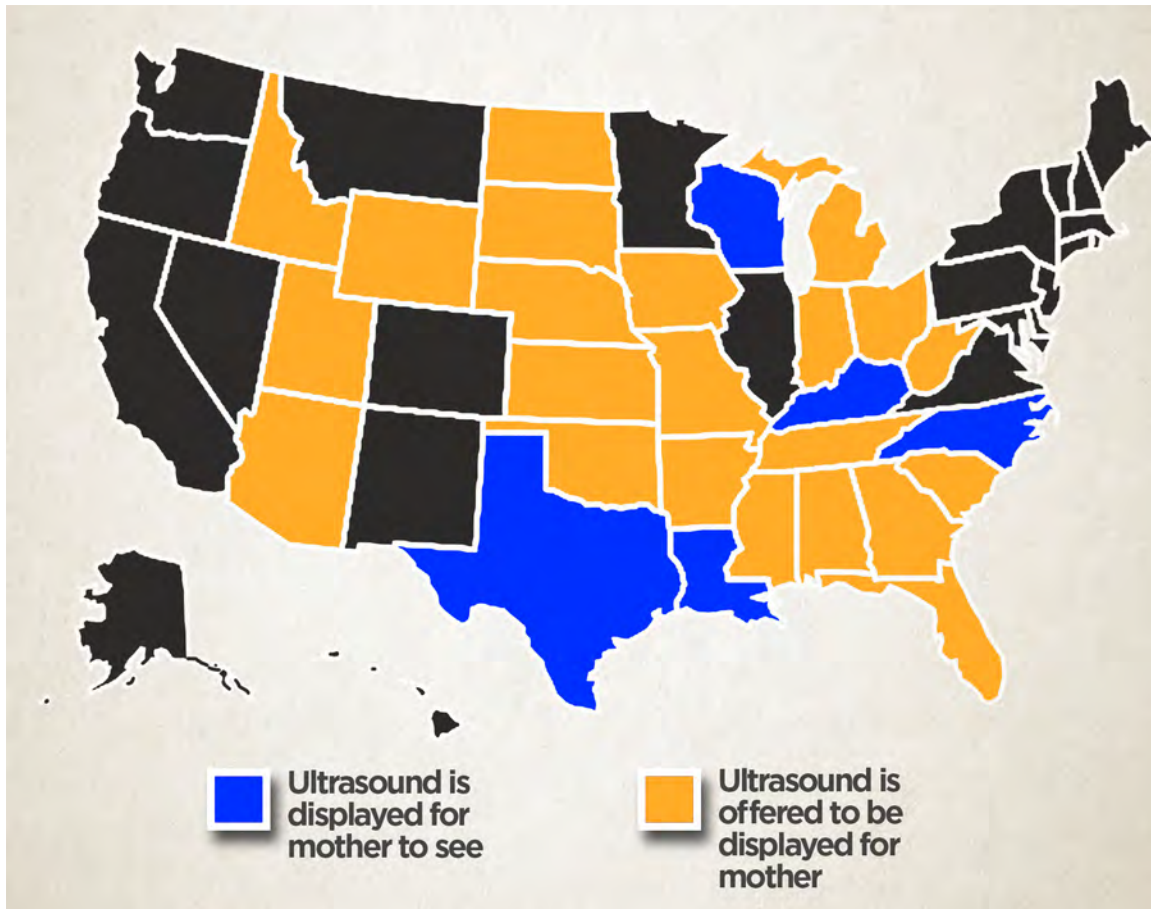
During the 2015 state legislative session, Kansas\* and Oklahoma\* became the first two states to enact the Unborn Child Protection from Dismemberment Abortion Act. D&E dismemberment abortions of living unborn babies are as brutal as the partial-birth abortion method, which is now illegal in the United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

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

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

\*not in effect pending litigation

## A Woman's Right to Know: Ultrasound Laws



Providing a “window to the womb,” ultrasound images give a mother the unique opportunity to see her living unborn child in “real time.” Pro-life laws dealing with ultrasound mainly require abortion facilities to offer a pregnant mother the opportunity to view an ultrasound of her unborn child before an abortion is performed.

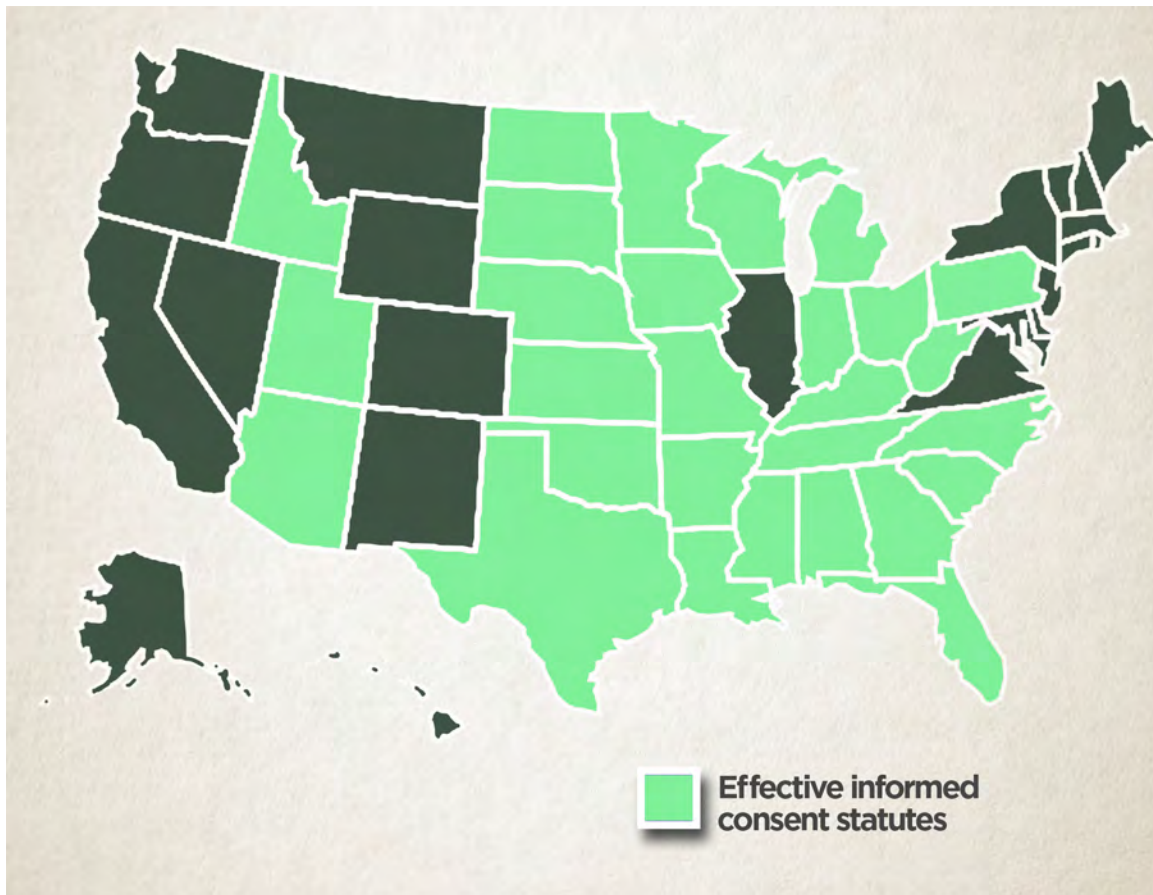
Five states require that an ultrasound be performed prior to an abortion. The screen must be displayed so the mother can view it and a description of the image of the unborn child must be given. They are Kentucky, Louisiana, North Carolina,\* Texas and Wisconsin.

Six states require that an ultrasound be performed and that the mother be offered the opportunity to view the ultrasound. They are Alabama, Arizona, Florida, Iowa, and Mississippi. Twelve states require that the mother be provided with an opportunity to view an ultrasound if ultrasound is used as part of the abortion process. They are Arkansas, Georgia, Idaho, Kansas, Michigan, Nebraska, Ohio, Oklahoma, South Carolina, Tennessee, Utah, and West Virginia. Five states require that the mother be provided with the opportunity to view an ultrasound. They are Indiana, Missouri, North Dakota, South Dakota, and Wyoming.

\*North Carolina is enjoined.



## A Woman's Right to Know: Informed Consent



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

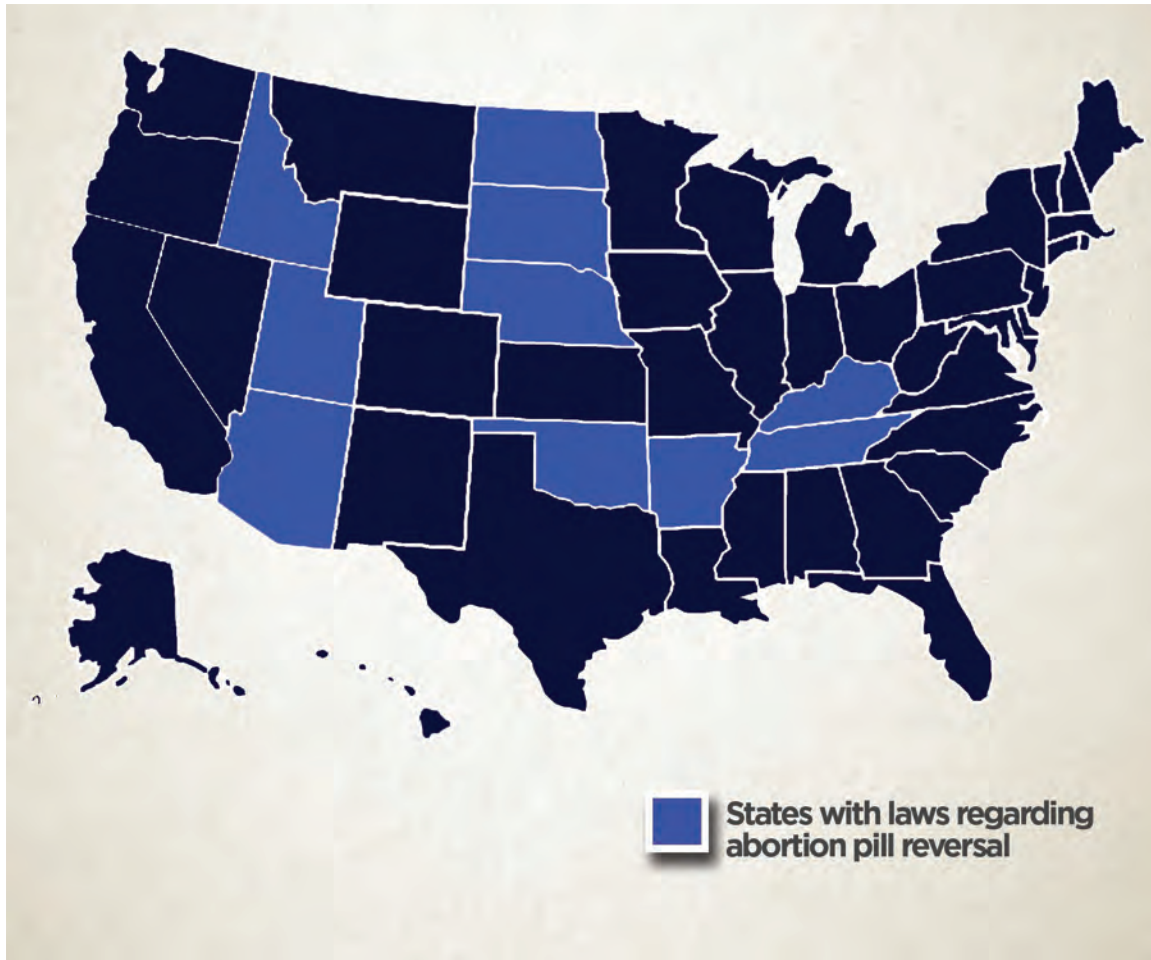
Twenty-nine states [using language like that upheld in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)] currently have effective informed consent laws in place: Alabama<sup>^</sup>, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana<sup>^</sup>, Iowa<sup>\*\*</sup>, Kansas, Kentucky, Louisiana<sup>^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

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

<sup>\*\*</sup> Iowa is temporarily enjoined pending litigation.



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

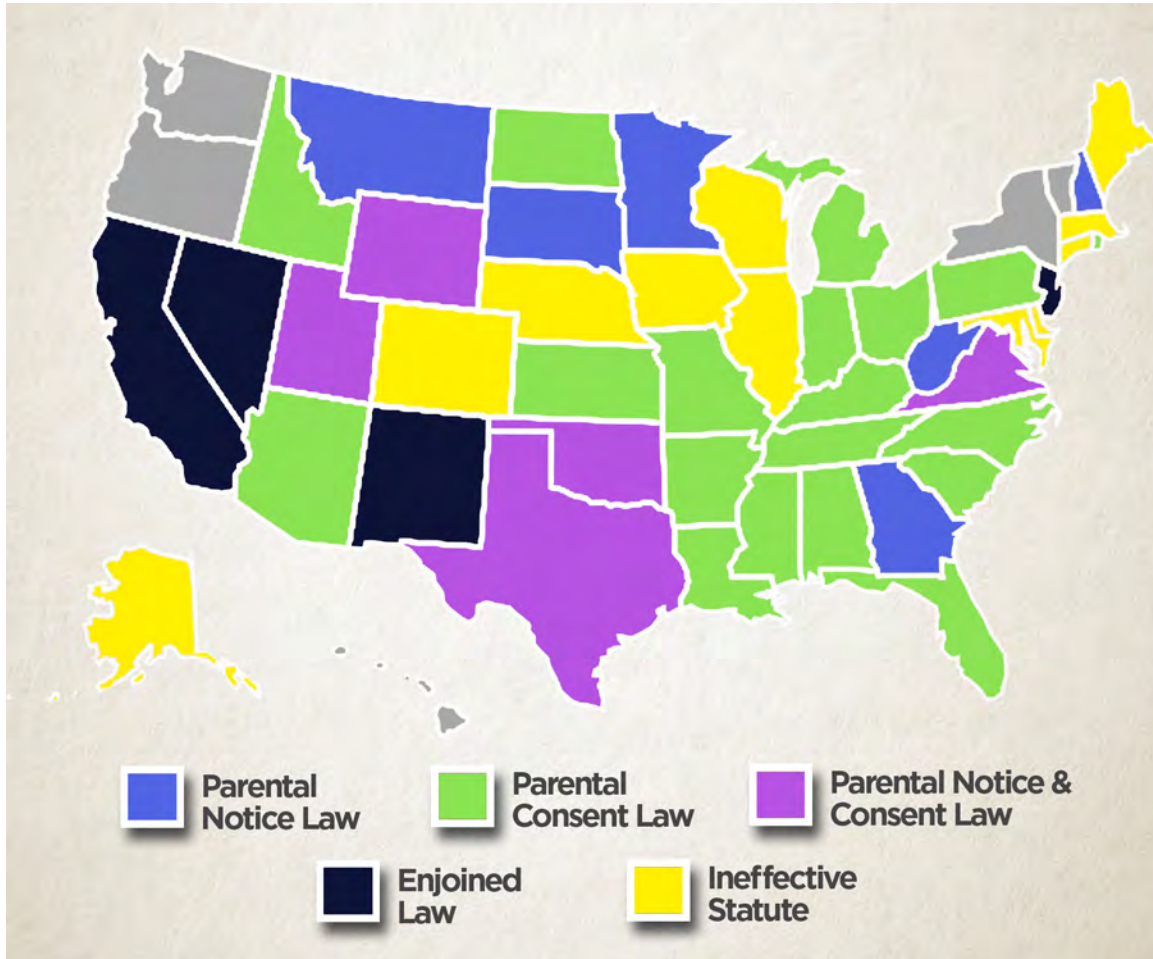


Most recently, states have moved to enact a form of informed consent law that requires abortion facilities to inform a woman prior to or soon after the first step of a chemical abortion that if she changes her mind, it may be possible to reverse the effects of the chemical abortion, but that time is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

Currently nine states have enacted laws requiring this information to be provided: Arizona\*, Arkansas, Idaho, Kentucky, Nebraska, North Dakota, Oklahoma, South Dakota, Tennessee, and Utah.

\*A previous abortion pill reversal law was repealed following legal action and was replaced with weaker language in accordance with the consent agreement. See *Planned Parenthood Arizona, Inc., et. al., vs Mark Brnovich*.

## Parental Involvement Laws

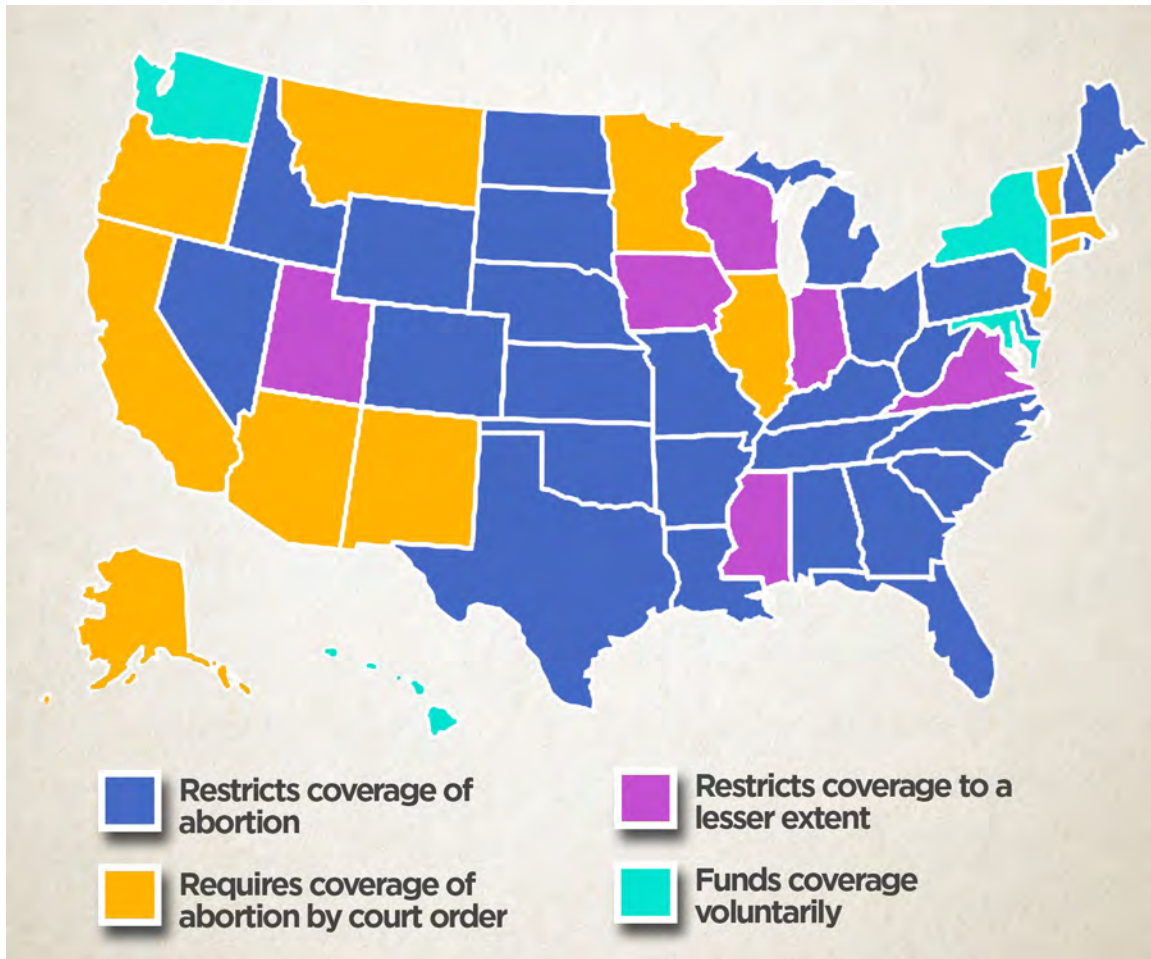


Most parental involvement laws require that abortionists either notify or obtain consent of a parent or guardian before a minor girl has an abortion. Studies show the positive impacts these laws have in significantly reducing the rates of abortion, birth, and pregnancy among minors. Public opinion polls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

Six states have passed parental notice laws, 19 have parental consent laws, five states provide for parental notice and consent, and four states have laws that are enjoined.

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

## State Policies on Public Funding of Abortion



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

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

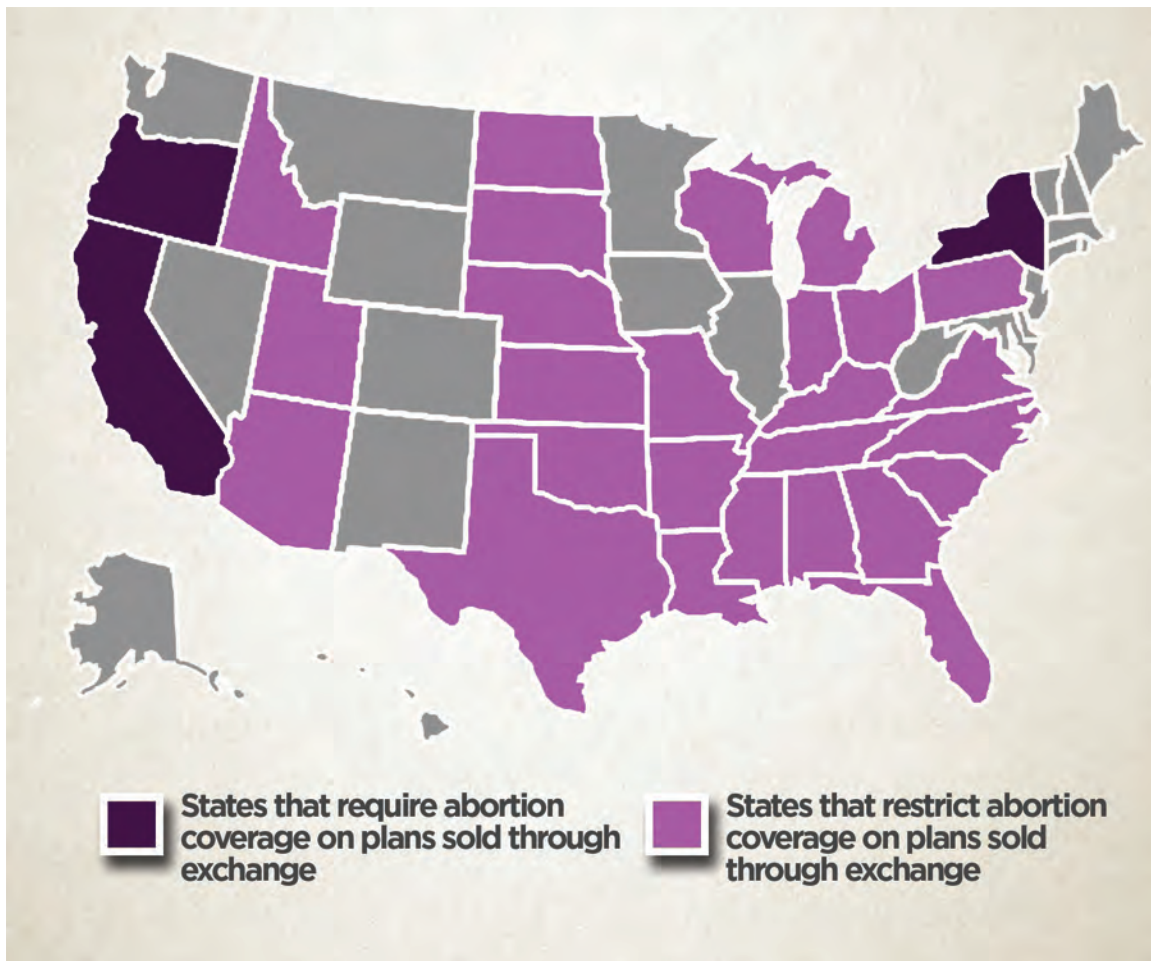
Currently, 17 states fund Medicaid coverage of abortion voluntarily or have laws in place requiring funding (of these, 13 are due to court decisions). Twenty-seven (27) states and the District of Columbia have laws that limit funding to cases of life endangerment, rape, and incest; six states limit abortion funding to a lesser extent.



## Preventing Taxpayer Subsidies for Abortion Coverage

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

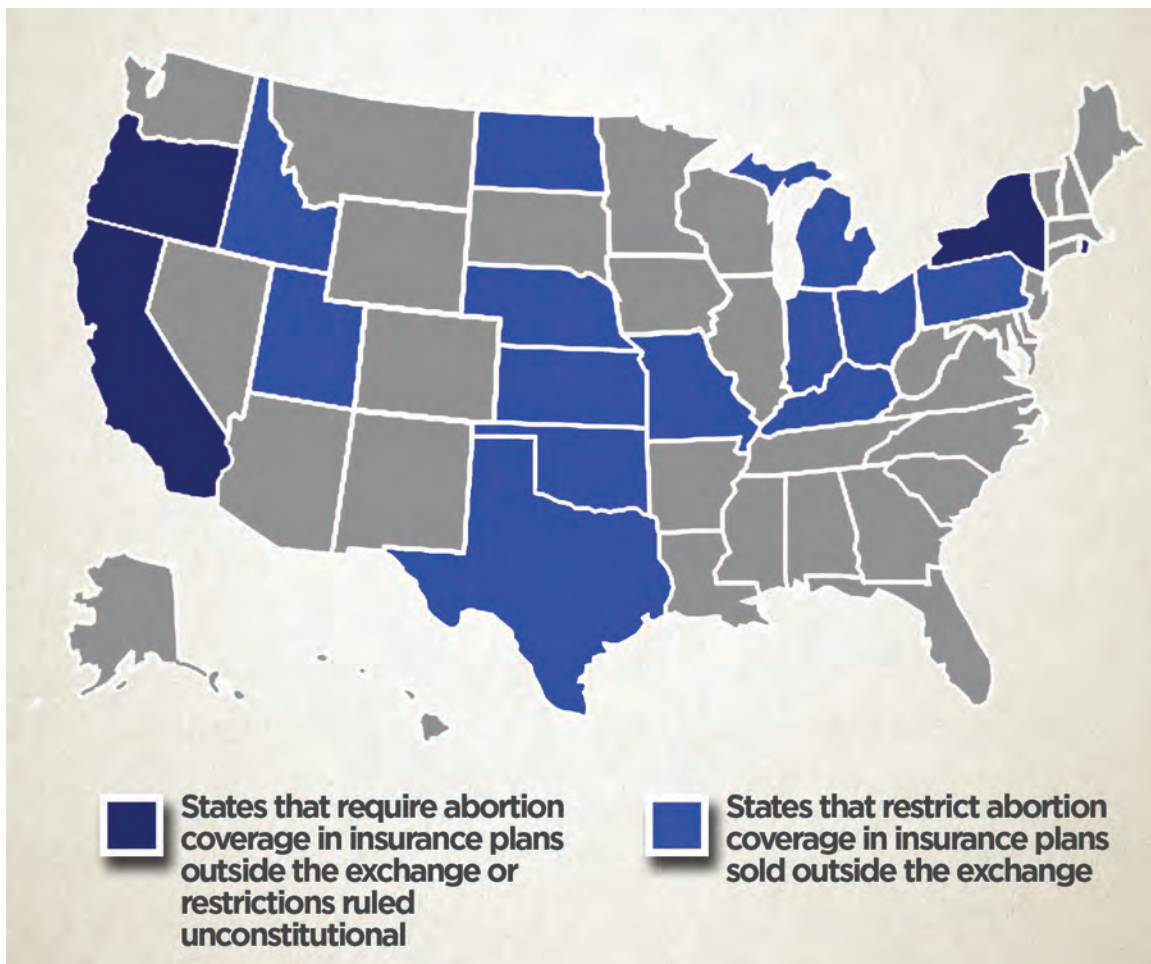
### INSURANCE PLANS SOLD THROUGH THE EXCHANGE



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

## Preventing Taxpayer Subsidies for Abortion Coverage

### INSURANCE PLANS SOLD OUTSIDE THE EXCHANGE

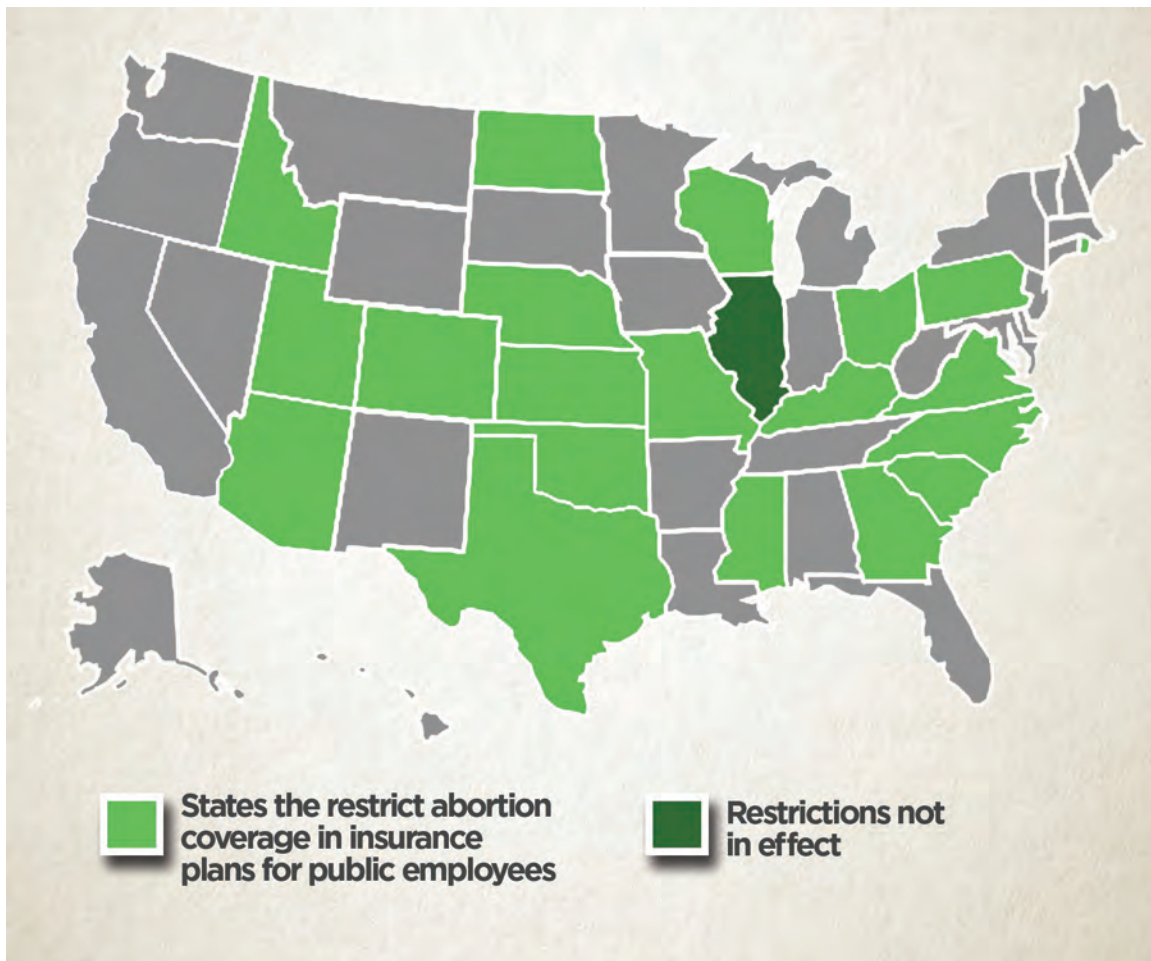


Thirteen (13) states prohibit elective abortion coverage for plans outside of the health insurance exchange: Idaho, Indiana, Kansas, Kentucky, Michigan, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, Texas, and Utah.



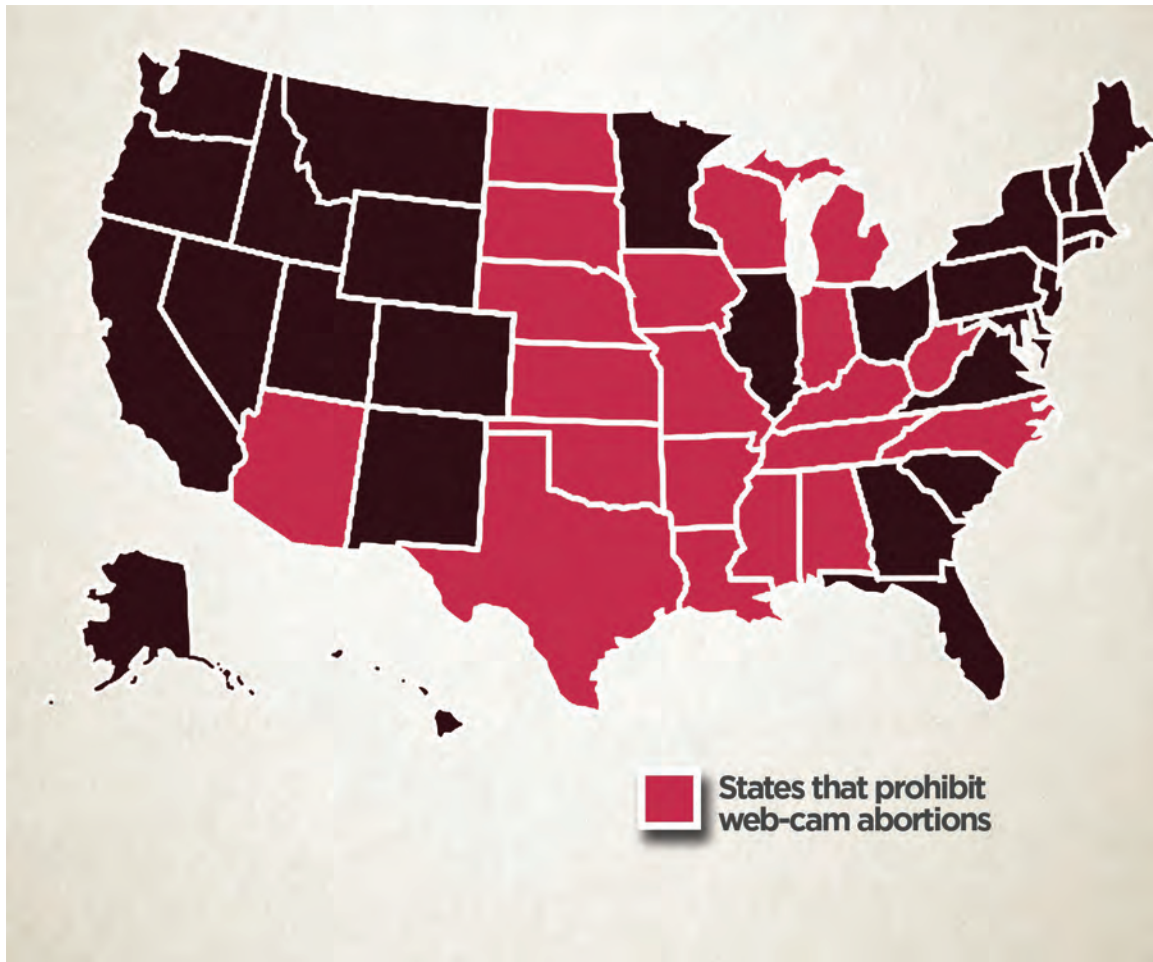
## Preventing Taxpayer Subsidies for Abortion Coverage

### INSURANCE PLANS FOR PUBLIC EMPLOYEES



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

## Web-Cam Abortion Prohibitions



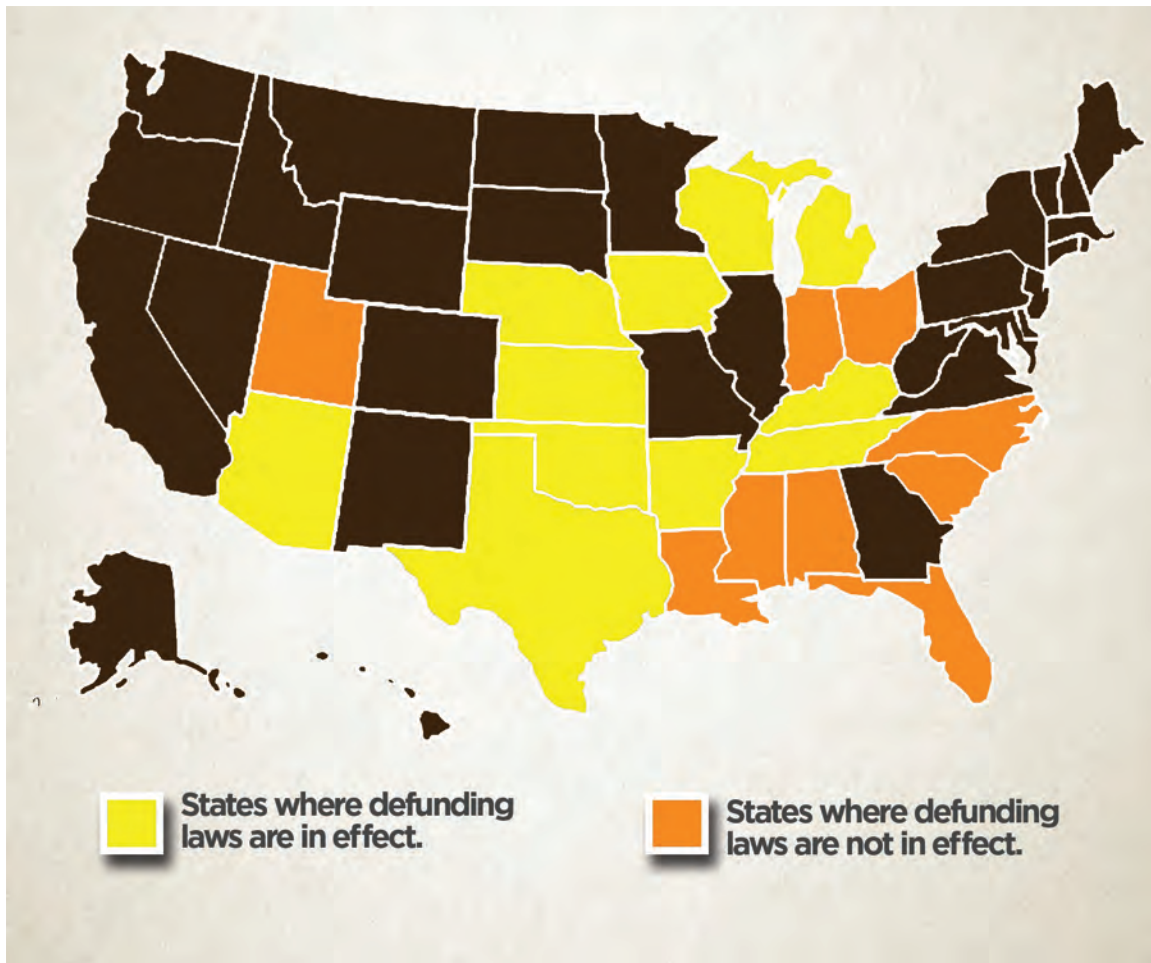
“Web-cam” abortions are chemical abortions done via a video conferencing system where the abortionist is located at one location and uses a closed circuit television to talk over a computer video screen with a woman who is at another location. The abortionist never sees the woman in person because they are never actually in the same room.

This important pro-life legislation prevents web-cam abortions by requiring that, when RU-486 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 20 states prohibit these “web-cam” abortions: Alabama, Arizona, Arkansas, Indiana, Iowa\*, Kansas\*, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, West Virginia, and Wisconsin.

\*Iowa and Kansas laws are currently enjoined.

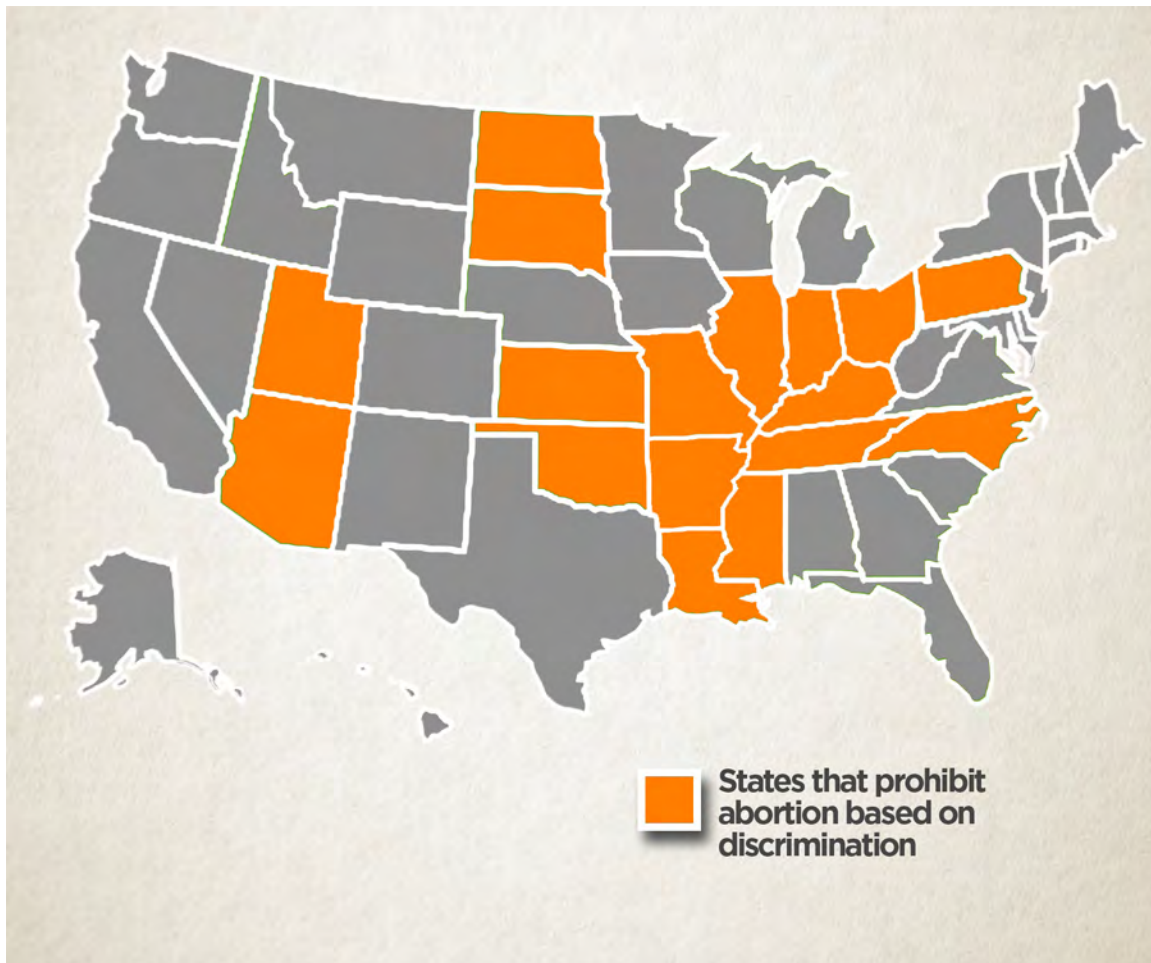
## Defunding Abortion Giants



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

A total of 20 states have acted to prevent Title X funds from being distributed to abortion providers in their state. Of these, eleven are currently in effect (Arizona, Arkansas, Iowa, Kansas, Kentucky, Michigan, Nebraska, Oklahoma, Tennessee, Texas, and Wisconsin).

## Anti-Discrimination Abortion Bans



These laws protect unborn babies from being aborted on account of their sex, race, and/or genetic disability. Sex Selection Abortion is a form of prenatal discrimination that wages a war typically on unborn baby girls. In April 2013, a poll taken by The Polling Company found that 85% of respondents supported banning sex selection abortions.

Currently seventeen (17) states have enacted laws protecting unborn children from discrimination based on their sex, race, and/or genetic disability. These states, in order of enactment are: Illinois (1975)\*, Pennsylvania (1982), Oklahoma (2010), Arizona (2011), North Dakota (2013)^, Kansas (2013), North Carolina (2013), South Dakota (2014), Indiana (2016)^, Louisiana (2016)\*\*, Ohio (2017)\*\*, Arkansas (2017)^, Kentucky (2019)^, Utah (2019)\*\*, Mississippi (2020), Missouri (2020), and Tennessee (2020).

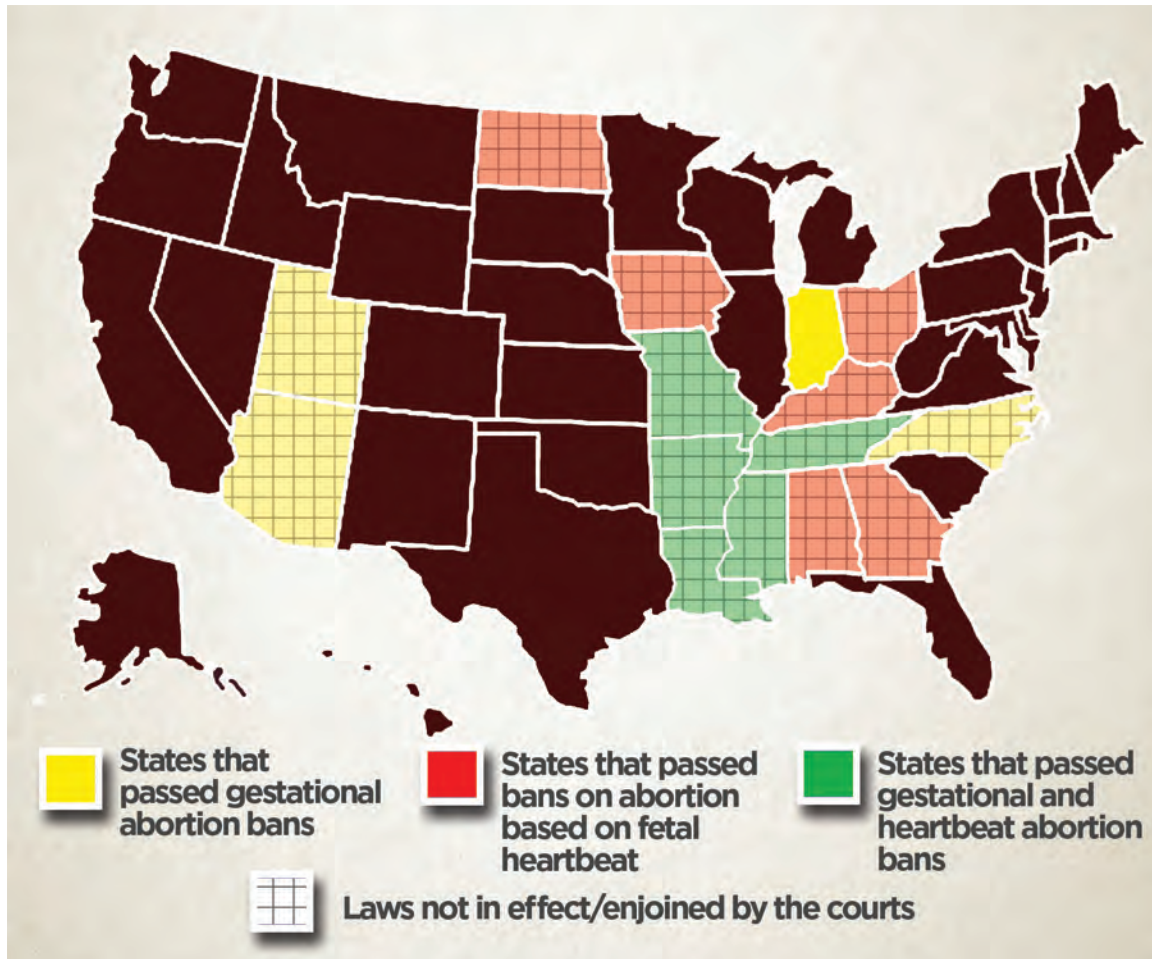
\*“Enjoined only to extent that it subjects physicians to criminal liability for performing certain pre-viability abortions.” Per consent decree, 1993

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

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



## Early Abortion & Time-Based Abortion Bans



Beginning in 2011, several states have attempted to pass laws banning abortion after the unborn child's heartbeat is detected or after a certain number of weeks of gestation. A total of eight states (Arkansas\*, Georgia, Iowa, Kentucky, Louisiana\*, Mississippi\*, North Dakota, and Ohio) have passed laws prohibiting abortion after the unborn child's heartbeat is detected. These laws are currently either enjoined pending litigation or permanently blocked.

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

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

^Indiana's 2011 law prohibits abortion after the point at which the unborn baby is viable or 20 weeks, whichever is earlier, unless necessary to prevent a "substantial permanent impairment of the life or physical health" of the woman.



# THE PRO-LIFE ELECTORAL ADVANTAGE

## Abortion Remained Major Factor in 2020

A post-election poll of voters in the 2020 election found that the issue of abortion once again played a key role in the presidential and congressional elections, and that National Right to Life's political committees and those of its state affiliates were key to getting out the pro-life vote for pro-life candidates.

**Nationally, 23% of voters said that the abortion issue affected their vote and voted for candidates who oppose abortion. This compares to just 18% who said abortion affected their vote and voted for candidates who favor abortion, yielding a 5% advantage for pro-life candidates.**

**In states where National Right to Life's political committees were most actively involved, 27% of voters said that the abortion issue affected their vote and voted for candidates who oppose abortion. This compares to just 16% who said abortion affected their vote and voted for candidates who favor abortion, yielding an 11% advantage for pro-life candidates in those high-activity states.**

These poll results show that the pro-life vote was a major factor in crushing the "blue wave" from state legislatures to Congress. Overall, National Right to Life's political committees were actively involved in 127 races (including the presidential race.) In those races, 84 (66%) pro-life candidates prevailed.

Despite being vastly outspent by pro-abortion organizations such as Planned Parenthood and EMILY's List, pro-life candidates won in November by significant margins. There were 58 races in which a candidate supported by National Right to Life was running against a candidate supported by the pro-abortion PAC EMILY's List. Forty-one (or 71%) of the National Right to Life-supported candidates won.

Polling also found that voters heard and saw the right-to-life message in the days leading up to the election. The poll found that 31.9% (or approximately 45 million voters) recalled receiving, hearing, or seeing information or advertising from National Right to Life. National Right to Life's state affiliates were also actively involved in voter outreach for the election. Twenty-one percent recalled receiving information or hearing advertising from a right-to-life group in their state. Voters also recalled other pro-life groups that were involved in the election: 7.3% recalled hearing or receiving information about candidates from Susan B. Anthony List; 8.2% recalled hearing or receiving information about candidates from Women Speak Out PAC; and 10.3% recalled hearing or seeing information from Americans United for Life.

The poll of 1,000 actual voters was conducted by McLaughlin & Associates, November 2-3, 2020, and has a margin of error of +/-3.1%.

# 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.

# THE SUPREME COURT AND ABORTION

## ***Maier 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.

***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.”



# THE SUPREME COURT AND ABORTION

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.

## ***Stenberg v. Carhart* (2000)**

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

## ***Gonzales v. Carhart* (2007)**

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

## ***Whole Woman’s Health v. Hellerstedt* (2016)**

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

## ***June Medical Services LLC v Russo* (2020)**

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





# THE PRESIDENTIAL RECORD ON LIFE

## President Donald J. Trump 2017-2021

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

*-President Donald J. Trump*

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



# THE PRESIDENTIAL RECORD ON LIFE

## President Barack Obama 2009-2017

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

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



# THE PRESIDENTIAL RECORD ON LIFE

## President George W. Bush 2001-2009

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

*-President George W. Bush*

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



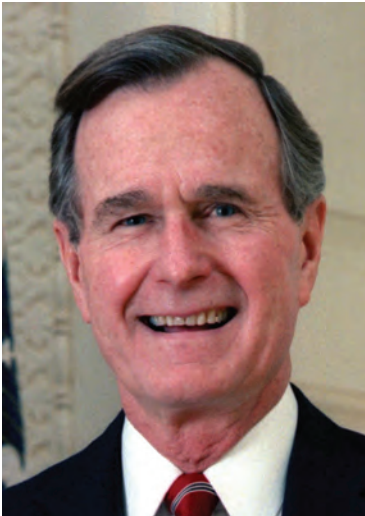
# THE PRESIDENTIAL RECORD ON LIFE

## President William Clinton 1993-2001

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

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





# THE PRESIDENTIAL RECORD ON LIFE

## President George H.W. Bush 1989-1993

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

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

*-President George H.W. Bush*

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





# THE PRESIDENTIAL RECORD ON LIFE

## President Ronald Reagan 1981-1989

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

*-President Ronald Reagan*

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



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

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

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

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

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

**Abortion:** Abortion stops a beating heart more than 2,300 times a day. National Right to Life works to educate Americans on the facts of fetal development and the truth about abortion; works to enact legislation protecting unborn children and providing abortion alternatives in Congress and state legislatures; and supports activities which help women choose life-affirming alternatives to abortion.

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

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

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

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

This report may be downloaded from the National Right to Life website at: [www.nrlc.org/uploads/communications/stateofabortion2021.pdf](http://www.nrlc.org/uploads/communications/stateofabortion2021.pdf).



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