

THE
STATE_{OF}
ABORTION
IN THE UNITED STATES

JANUARY 2016



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

National Right to Life estimates that, since the U.S. Supreme Court legalized abortion 43 years ago in *Roe v. Wade* and *Doe v. Bolton*, more than 58 million unborn children have lost their lives. Each one of those abortions is a tragedy, not just because an innocent child died, but because of the lasting impact the abortion itself had on the mothers of those children.

Since 1968, the National Right to Life Committee has been working to protect unborn children and their mothers from the tragedy of abortion. In the aftermath of the Court's decisions on January 22, 1973, our network of state affiliates, local chapters, and citizen activists have worked tirelessly to enact laws that protect unborn children and offer life-affirming alternatives to their mothers. And we continue to see evidence that this strategy is working.

In late November 2015, the U.S. Centers for Disease Control & Prevention found a 4.2% drop in the number of abortions for the 2012 reporting year. While the CDC only includes and compares data from 47 state health departments, the information we can glean from this latest information gives us reason for hope that Americans, and especially women facing unexpected pregnancies, are rejecting abortion.

All of this is welcome news and confirms what we have long known: pro-life education and legislative efforts are making an impact on our culture and in the lives of women facing unexpected pregnancies.

This third annual "State of Abortion in the United States" looks at where we are on the 43rd anniversary of *Roe v. Wade* and *Doe v. Bolton*. In this presidential election year, we also take moment in these pages to review presidential actions on the life issues, starting with President Barack Obama, and going back to President Ronald Reagan.

While we estimate that more than one million unborn children are still being aborted every year, we know that we will ultimately be successful, because at our core as a society, we know the immutable truth: killing unborn children is wrong.

DECLINING ABORTION NUMBERS SHOW PRO-LIFE PROGRESS



Abortions rose quickly and topped the million a year mark in 1975 and hit an annual 1.5 million in 1980. They peaked at 1.6 million in 1990, but began dropping in subsequent years. After appearing to level off around 1.2 million in the mid 2000s, the most recent national reports shows the annual total back down to just over one million, and declining abortion rates and ratios show that this is not merely a statistical anomaly.

National Right to Life now estimates, based on these data from the Guttmacher Institute and the U.S. Centers for Disease Control & Prevention (CDC), that the total number of abortions since 1973 has reached **58,586,256**.

New Data from the CDC

Figures released in November 2015 by the CDC show that the number of abortions are continuing to drop—by an additional 4.2% in 2012. That means more than 31,000 fewer abortions in just one year's time.

Abortion rates and ratios, which are very helpful for understanding the background, also continued to show declines. Conclusion? More and more women are rejecting abortion as a solution to unexpected pregnancy.

Relying on reports from 47 state health departments, the CDC reported 699,202 abortions for 2012, the lowest figure the agency has recorded since 1973, the year the Supreme Court first legalized abortion on demand. This figure, however, does not include abortions from California, the nation's most populous state, or from New Hampshire or Maryland.

By contrast The Guttmacher Institute surveys clinics directly and does have data from all fifty states. Their last report showed more than 219,000 abortions for the three states missing from the CDC's totals.

Guttmacher's more aggressive search obtained a figure 1.06 million abortion for 2011. The CDC's 2012 data is an indication that the national figure has dropped further, but it is difficult to say precisely how much.

In the states that the CDC did survey, it found an abortion rate of 13.2 abortions for every 1,000 women aged 15-44 years. As for the abortion ratio, the CDC found that there were 210 abortions for every thousand live births.

**TOTAL ABORTIONS
IN THE UNITED STATES
58,586,256
SINCE 1973**

To illustrate how large the drops are consider this. The CDC's abortion rate was 25 per thousand women in 1980 (almost twice as high as 2012) and the abortion ratio it reported was 364 abortions per thousand live births in 1984.

Down Across the Country

A look at the state-by-state totals confirms not just the depth but the breadth of the decline. Declines were seen in 38 out of the 47 reporting states, some significant.

While abortions dropped 4.2% across the board, declines of 12.2%, 13%, 16.2%, and 39.6% were seen in Virginia, New Jersey, New Mexico, and Maine respectively.

There is no single cause that can explain every drop. During the time frame involved, Virginia debated safety regulations for clinics, New Jersey and Maine both had budget cuts that caused clinics to close, and New Mexico finally saw its high abortion totals, which lagged behind the rest of the country, begin to fall. Long-term educational, legislative and outreach efforts have surely played a role in many states.

Most of the increases in the few states that did see higher numbers were minimal. For example there was an increase of 9 abortions in Nevada, 37 in Delaware, 39 in Wyoming, and 70 in North Dakota.

However even in states where there were larger increases, such as Massachusetts (1,036) and Illinois (1,944), earlier trends or later data indicate these are temporary fluctuations in what are in fact longer-term declines.

Down in All Age Groups

In other encouraging news, abortion rates appear to be down across all age groups, but especially among younger women. The latest CDC figures show declining rates for every age group between 2011 and 2012. Teenagers 15-19 led the way. That demographic experienced a 12.3% drop in just one year, from 10.6 abortions per thousand to 9.3 per thousand.

Women with the highest abortion rate—those ages 20-24— had their rates drop from 25.2 to 23.6 in just a year's time.

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DECLINING ABORTION NUMBERS

All told, teens 15-19 saw their rates drop 40.4% over the past 10 years measured (2003-2012). The abortion rate for women 20-24 dropped 24.4% and rates for women 25-29 fell 10.1% over the same time period.

And even while women over 40 saw their rates increase 7.7% from 2003 to 2012 (due to the increased prevalence of prenatal testing for conditions like Down syndrome?), even that group saw a decline of 3.4% from 2011 to 2012.

Abortion ratios

Abortion ratios— the number of abortions for every 1,000 live births— were down in all age groups, too. This is very important because it indicates that women who become pregnant are more likely to choose life for their babies than any in the past four decades.

In the past ten years (2003-2012), abortion ratios fell for all groups. The greatest decline was among 15-19 year olds, dropping from 378 abortions for every thousand live births in 2003 to 310 per thousand in 2012.

Those under 15 years old (which have accounted for just half of one percent of the total abortions or less in the U.S. since 2006) still had a high ratio of 817 abortions for every thousand live births. But even their abortion ratio was down 3.9% from the previous year.

More early, more chemical abortions

About two thirds of all abortions (65.8% in the states reporting gestational data) were performed at eight weeks gestation or earlier. [Gestational age is reported according to clinician estimates in some states and calculated according to a woman's last menstrual period in others.] More than half of those performed at eight weeks or less, or 38.2% of the total reported by gestation, were performed at six weeks gestation or earlier. This surveillance report shows this as the highest percentage of abortions performed at six weeks or less in the past ten years studied (2003-2012).

Not surprisingly, given the increased percentages of abortions at lower gestations, the numbers and percentages of chemical or "medical" abortions were higher. More than one in five (20.7%) of abortions performed at eight weeks gestation (or earlier] were listed as "medical" abortions by the CDC. ("Medical" is code for chemical.)

These are the highest figures the CDC has reported for this type of abortion since the government allowed the abortifacient mifepristone (RU-486) to go on the market in September of 2000. Chemical abortions at greater than eight weeks accounted for an additional 1.1%.

Seven in ten abortions (69.5%) were first trimester "curettage" abortions and an additional 8.7% were curettage abortions performed after 13 weeks. This would include suction aspiration

abortions performed up through about 16 weeks and dilation and evacuation or D&E “dismemberment” abortions performed after that point.

States which did not report gestational age reported nearly 33,000 more curettage abortions and more than 10,500 additional chemical abortions. Only a handful of abortions were performed by intrauterine instillation (146) or hysterectomy/hysterotomy (79) in 2012.

Race and Ethnicity

Getting a handle on the race and ethnicity of aborting women can be difficult. States employ different criteria for measuring each characteristic, so that a single state might report three different numbers for, say, Hispanic abortions in three different charts for the same year.

Add to this that many of the states do not report any racial or ethnic data at all (including not just California and Maryland, listed earlier, but large states such as Florida and Illinois, as well as Washington state, Arizona, Massachusetts, and the District of Columbia). Cumulatively this makes identifying “the” number or percentage of abortions to a given group for a given year well nigh impossible, though data exist.

With that caveat, Table 12 of the CDC’s report for 2012 shows a breakdown of 37.6% abortions in 26 states which did include ethnic data were to white, non-Hispanic women, 36.7% to non-Hispanic black women, 7% to “other” non-Hispanic women and 18.7% to Hispanic women. Other tables place the percentage of abortions to black women as high as 40.5% and the percentage to Hispanic as low as 17.4%. But it is clear by any counting that minorities are much over-represented in the statistics relative to their population.

Back in Table 12 again, the abortion rate for Hispanics is nearly twice (15 abortions per thousand women of reproductive age) what it is for whites (7.7 per thousand). The abortion rate for blacks (27.8) is nearly four times that of whites.

Repeat abortions and previous births

Close to half (44.2%) of women having abortions have had at least one previous abortion. Eleven percent report two previous abortions and 8.6% report three abortions or more. What may be more disturbing is that nearly six in ten (59.8%) report having already previously given live birth to at least one child.

Marriage and Mortality

Married women accounted for just 14.7% of abortions in the 36 states reporting marital status, with 85.3% of aborting women being unmarried.

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Mortality statistics are always a year late for the CDC, but this report indicates that two more women are known to have died from legal abortions in 2011. Ten others were known to have died in 2010. All told, the CDC has recorded 424 maternal deaths from legal abortion since the 1973 *Roe v. Wade* decision.

Despite claims that chemical abortions offered improved safety, maternal abortion deaths appear to have gone up since their approval.

What the numbers tell us

Every life lost to abortion is a tragedy. That there are fewer than there have been for nearly forty years is good news, but that there are still so many is an indication there is much work yet to be done.

The latest statistics from the CDC strongly suggest we have been very successful in reducing the prevalence of abortion among teenagers. This is encouraging, and not just because of the lives saved. Observing data over the long term, this would suggest a generational shift in attitudes and actions surrounding abortion—that is, that a woman will be less likely to abort not only in her teen years, but also as she grows older.

Abortion rates are still uneven when it comes to race and ethnicity. Abortion rates have fallen across the board, but black and Hispanic women are still considerably more likely to abort than their white counterparts. More pro-life outreach clearly needs to be done to these minority communities.

Abortion too often appears to have become accepted in some quarters, with nearly half of abortions being repeat abortions. Moreover too many mothers to already-born children are turning to abortion rather than giving birth to another child. The availability and awareness of realistic alternatives to abortion are critical to these communities.

Chemical abortions are on the rise, with more women aborting earlier and using chemical methods. Abortion center are big boosters of chemical abortifacients because it enables them to expand their abortion business at minimal cost and effort. But, as noted, they do not make abortion safer for women and certainly do not make it safer for their unborn children.

That there are hundreds of thousands fewer abortions today than there were ten, or even twenty years ago is proof that pro-life education, legislation, and outreach make a difference. Keep informed, stay active, and expand the outreach so that more and more lives are saved.

PLANNED PARENTHOOD'S AGGRESSIVE ABORTION AGENDA



WHEN YOU
THINK PLANNED
PARENTHOOD,
THINK
ABORTION!

Center for Medical Progress
RIGHT TO LIFE
www.cmp.org

To say that 2015 was not the year Planned Parenthood dreamed of would be putting it mildly. The release of videos showing high-level executives haggling over the price of fetal parts brought a firestorm of negative publicity, launching congressional investigations and threatening their group's state and federal funding, turned into something more like a nightmare for the nation's biggest abortion performer and promoter.

Planned Parenthood showed, though, that however impacted by the publicity it might be, it was still dangerous. It rallied its supporters in the media and on Capitol Hill, muddying the waters with tenuous claims that the videos were "heavily edited," defending their callous cruelty by trying to argue that no laws were broken. But that misses the point. The videos shed light on the barbarity of legal abortion itself, and the subsequent callous attitudes toward human life and practices that dehumanize the unborn that are part and parcel of the abortion culture in the United States.

What ultimate effect this debacle will have on the group's reputation and revenues has yet to be determined. Abortion clinics stayed open even where undercover videos exposed some of Planned Parenthood's most horrific practices and President Obama vetoed legislation that would have put a halt on most of the organization's federal funding for a year. But with a national election ahead and the issue fresh on voters' minds, a new administration may chart a different course.

Planned Parenthood is already preparing for the future. It recently endorsed staunchly pro-abortion Democrat Hillary Clinton and can be counted on to spend millions to elect other pro-abortion candidates this year, just as it has in the past.

Planned Parenthood's annual report revealing

The latest annual report of the Planned Parenthood Federation of America came out around the turn of the year, but officially covered only the period through June 30, 2015, before the undercover videos from the Center for Medical Progress were released. But one finds in those pages not only what really matters to Planned Parenthood, but where they concentrate their energy and efforts, particularly when things get tough.

An unyielding commitment to abortion is the one constant at Planned Parenthood. Even as they have fallen substantially nationwide, abortions at Planned Parenthood have remained steady. This was true as Planned Parenthood's total delivered services, such as

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contraceptives, and its vaunted “cancer screenings” dropped, and even as many of its clinics closed and its smaller affiliates disappeared in mergers.

Revenues stayed up too, interestingly enough, despite the drop in services and the economic downturn. Planned Parenthood can thank the taxpayers for that, with governments kicking in about half a billion dollars a year, just to keep a “non-profit” afloat that has tens of millions of dollars of “excess of revenues over expenses” left over each year.

Maintaining its position as nation's top abortion chain

Clinics affiliated with the Planned Parenthood Federation of America performed 323,999 abortions in 2014. That's just over three thousand less than it performed in 2013 (327,633) but right about what it did in 2008 (324,008).

After first breaking the 300,000 barrier in 2007 (305,310), Planned Parenthood's abortion numbers hovered around 320,000 to 330,000 for the past eight annual reports, peaking at 333,964 in 2011.

Though we don't have national abortion figures for the past couple of years yet, these steady abortion totals from Planned Parenthood are all the more remarkable, coming at a time when there have been significant drops in abortions nationwide.

From 2008 to 2011, abortions nationally fell by nearly 13%, from 1,212,230 to 1,058,490, according to the Guttmacher Institute. (As discussed earlier in this report, figures from the U.S. Centers for Disease Control for 2012 show a continued decline, although the CDC's national totals are missing data from several states.) This means Planned Parenthood not only maintained its business, but gained market share.

Other services decline

All this while the rest of Planned Parenthood's services, including its oft-cited “cancer screenings,” were in a steep decline. And, it's important to remember, these “services” never included mammograms.

Planned Parenthood said it delivered 11,238,414 patient “services,” just five years earlier, in 2009. By 2014, the number was down to 9,455,582, according to this latest report.

“Cancer screenings” fell from 1,830,811 to just 682,208 in that same period of time, with “breast exams/breast care” falling off by more than half, from 830,312 in 2009 to 363,803 in 2014 and Pap tests down nearly two-thirds, from 904,820 to 271,539.

The surprise is not the overall drop off in the number of services – many businesses were struggling in America during that time – but that Planned Parenthood was able to keep its abortion business steady when everything else was in decline.

Another year, another billion in revenues

Annual revenues in 2015 (measured through June 30, 2015) dipped only ever so slightly from their all-time high of \$1.3 billion (\$1,303,400,000) last year, dropping to \$1,296,100,000, essentially a rounding error when you're dealing with figures that large.

Planned Parenthood has managed to keep revenues above a billion dollars in the last few years, even with the declining services and clinic closings. A steady stream of abortion income has helped, as has about a half billion dollars every year from U.S. taxpayers in the form of what Planned Parenthood terms "Government Health Services Grants and Reimbursements."

This is why Planned Parenthood is so heavily invested in the success of ObamaCare, which they hope offers them a steady stream of new customers and cash.

It also makes obvious why Planned Parenthood protests so loudly whenever there is talk of cutting its government funding. Though they are delivering fewer and fewer services to clients, they depend on that revenue to keep salaries paid and the doors open. They could give up abortion and see much of the opposition to their funding dry up, but that is the one commitment that appears to be non-negotiable. Even if it means fewer "cancer screenings" for their patients.

More mergers and megaclinics

Planned Parenthood has been merging a few affiliates and closing several clinics over the past several years. Planned Parenthood said it had 88 affiliates and 840 "health centers" in its 2009-2010 report; the latest report for 2014-2015 indicates just 59 affiliates and 661 clinics. This alone should account for some of the decline in services.

But, with abortion numbers remaining fairly stable, what is clear is either that most of the clinics that closed were not abortion performing clinics or that Planned Parenthood has made up for those abortion losses with giant new mega-clinics built to take their place. The new centers do not appear to have picked up the lost cancer screenings, but they do appear to have kept the lucrative abortion business humming.

For the past dozen years or so, while it was closing smaller clinics, Planned Parenthood affiliates embarked on a major building program, constructing more than 25 modern, high-capacity mega-clinics of 10,000 square feet or more in cities all across the U.S. High profile projects built or underway in Houston, Texas; Portland, Ore.; Aurora, Ill.; Fayetteville, N.C.; New Orleans, La.; St. Paul, Minn; and others were joined by new facilities being built in San Antonio, Texas; Spokane, Wash.; and Queens in New York City.

These are high volume regional abortion clinics where patients from smaller Planned Parenthood satellite offices can be referred. They also function as high profile corporate headquarters and centers for political organizing, and mobilizing pro-abortion activists.

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Planned Parenthood is more than just a “reproductive health care provider” with a sizable and profitable abortion sideline. Their latest annual report not only shows how abortion is a huge profit center for their business, but is also a chief focus of Planned Parenthood’s public and political advocacy campaigns.

Challenging pro-life, pro-woman laws

Planned Parenthood lists its advocacy on behalf of “safe and legal abortion” as one of its top achievements in 2015 and headlines early in the 2014-2015 annual report state that “We protected and expanded access to abortion.”

Planned Parenthood trumpets court victories against clinic regulations and physician requirements in Indiana, Louisiana, and Wisconsin. These laws were designed to make sure (a) that facilities were safe, sterile, and capable of accommodating emergency equipment or personnel in the event of a medical emergency and (b) to ensure that the abortionist handling those cases could accompany his patients to area hospitals if needed by having admitting privileges.

In discussing these laws, Planned Parenthood expresses no concerns for the health and safety of women having abortions at its clinics. Instead the report complained about how such laws “would have severely limited the practices of abortion providers as well as abortion facilities and made it much harder for women to access safe and legal abortion care.”

What about that whole “pro-choice” mantra where women are supposed to be presented with all their options? Planned Parenthood proudly mentions that its attorneys were able to block an ultrasound law in North Carolina that would have made sure that women visiting its clinics were able to see an ultrasound of their unborn baby before having an abortion.

Despite statements elsewhere that ultrasounds before abortions are “the medical standard” to confirm gestational age (*Commentary*, 2/22/12), Planned Parenthood says in the annual report that these ultrasounds “had no medical purpose and would have only served to shame women accessing basic health care.” If Planned Parenthood was already performing an ultrasound, it seems the only real danger here was women possibly changing their minds, depriving Planned Parenthood of an abortion fee.

Doing abortions without doctors

In the annual report, Planned Parenthood embraces the concept of “webcam abortions,” celebrating a victory in the Iowa Supreme Court which struck down regulations put in place by the Iowa Board of Medicine that essentially banned the dangerous procedure.

Planned Parenthood decries the fact that were such a law in effect, women in rural areas would have had to make multiple trips hundreds of miles from home to get chemical abortions. But Planned Parenthood chooses not to draw attention to the fact that the women would never be physically examined by a doctor, that their case might be managed by only a certified

medical assistant with a couple of years of community college, and that the only help they might be able to access if they encountered problems was a visit to the local emergency room, however far away that might be.

You also won't find mention in the report that women taking these chemical abortifacients have bled to death, experienced dangerous ruptures from ectopic pregnancies, or contracted rare fatal infections.

The California Planned Parenthood affiliate was instrumental in helping pass a law authorizing nurse practitioners, certified nurse-midwives, and physician assistants to perform first trimester surgical abortions. Planned Parenthood said this raised "abortion access to a gold standard" and increased the number of "providers."

Though there is no indication that new legislation expanding the ranks of potential abortionists in California made abortion any safer (data actually indicate it made things worse; see *NRL News Today*, 2/20/13), this does not stop Planned Parenthood from praising the "advocacy work" of Planned Parenthood Affiliates of California in getting the law passed.

The truth is that abortionists are harder and harder to come by, even in states with high abortion rates like California. It is simply inconsistent with medicine's healing mandate, and good doctors don't want to be associated with it.

But Planned Parenthood is nothing if not adept at improvising even if that lowers medical standards so that they can find more (and lesser skilled) personnel to keep their profitable abortion clinics open.

No limit to the killing

For Planned Parenthood, even a ban on abortions after 20 weeks, when medical science has demonstrated that unborn babies can feel pain, is too much. Planned Parenthood says that "women should not have to justify their personal medical decisions," and that these are "complex," "complicated" decisions that women need to work out with their doctors, implying these are primarily medical determinations.

But newspaper factcheckers have noted that women's reasons for later abortions are similar to their reasons for earlier ones, thus exposing the special medical justification as the red herring that it is (*Florida Times-Union*, 10/23/15).

Planned Parenthood neglects to mention in its annual report that it has a business interest in keeping late abortions legal. A recent count showed at least a dozen of its clinics performing abortions at 20 weeks or more (*NRL News Today*, 5/15/13).

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Creating a pro-abortion culture

Planned Parenthood's advocacy is not confined to Congress, the courts, or the clinics. Sprinkled throughout the latest annual report are spunky references to various music, film, or rock stars, trying to make it clear that Planned Parenthood is popular with the "in crowd."

Various well-known celebrities tweeted messages with Planned Parenthood's #IStandWithPP hashtag. Planned Parenthood proudly notes when Hollywood consults with them on films "to ensure they handled issues related to unintended pregnancy and pregnancy options, including abortion" accurately and sensitively."

That "sensitivity" does not appear to include due consideration of the sentience, the rights, and the humanity of the unborn.

The report observes that Planned Parenthood arranged for MTV's *Virgin Territory* to film at one of their clinics and that they were able to get very political actress Lena Dunham to feature a story line "destigmatizing abortion" on her HBO show, *Girls*. They also partnered with Dunham, who called those working at Planned Parenthood her "heroes," on her nine-city book tour.

Tired of being on the defensive, part of the abortion industry's new campaign to "fight abortion stigma" is to insist that there is nothing problematic, morally or otherwise, about abortion. With the "1 in 3 Campaign" (so-called for a claim that one in three women will have an abortion in their lifetimes), Planned Parenthood president Cecile Richards "led the way by sharing her own abortion story," thereby "amplif[y]ing" the voices of Planned Parenthood patients and supporters who have had an abortion."

A more efficient killing machine

Elsewhere in the annual report, Planned Parenthood talks about how it has streamlined patient access, making it easier to get appointments on-line, increased clinic productivity by reducing patient wait times, trained new affiliate CEO's to help them "build and leverage leadership skills," and "helped several affiliates return to financial health to ensure patients continued to receive the services they need."

Though these may seem like minor administrative tweaks and technology upgrades, these are the sorts of adjustments that help Planned Parenthood not only stay economically viable, but also maintain and expand market share.

Efforts to reach out to Latino and African American communities, on which the organization depends for a lot of its business, are also a critical part of Planned Parenthood's expansion plan.

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Failing to understand their opposition

Again, though this latest annual report covers the period before the release of the videos from the Center for Medical Progress revealing Planned Parenthood's connection to harvesting intact fetal organs, it is clear that this exposure has unnerved the organization.

In the opening letter, Planned Parenthood president Cecile Richards and chair Jill Lafer say that Planned Parenthood has been "tested in every way imaginable – and have emerged stronger than ever."

They say "no one would bother attacking Planned Parenthood if we didn't matter. Planned Parenthood's resilient staff and clinicians are making a huge difference in the field of reproductive and sexual health care and in the cultural landscape as well."

What they fail to consider is that the problem people have with Planned Parenthood is that they kill babies, for money, with a cavalier indifference to unborn human life—and they have in mind to do more of it.

Their place as the nation's top abortion performer and promoter, and the fact that they do what they do not only with the official blessing of the U.S. government, but hundreds of millions of our taxpayer dollars, is why they have been "tested in every way."

As the undercover videos clearly show, this commitment to abortion not only destroys human beings, but destroys our humanity. But Planned Parenthood is apparently committed to this cause, no matter how far down it drags America.

MOST AMERICANS OPPOSE MOST ABORTIONS PUBLIC OPINION POLLING

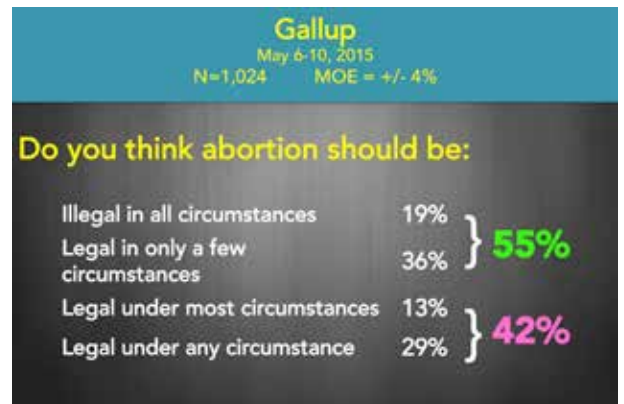
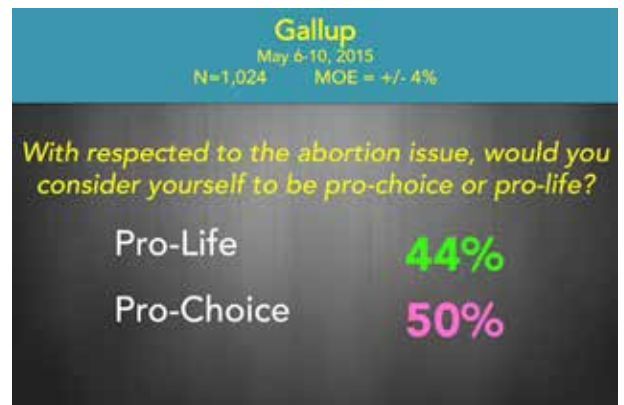


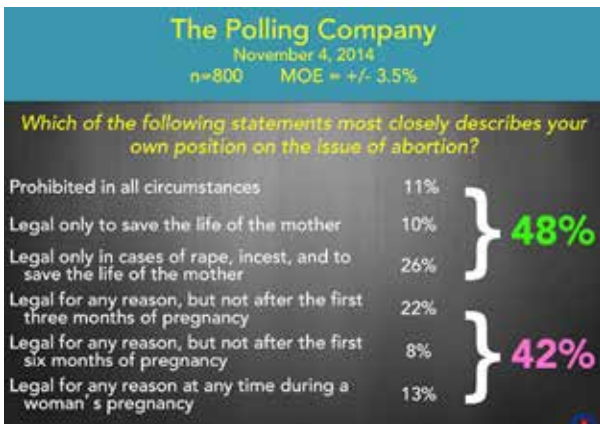
For the better part of almost three decades, public opinion polling has consistently shown a solid majority of Americans are opposed to the vast majority of elective abortions performed annually in the United States.

However, this is often overlooked because media reports often tend to rely on a single question that requires respondents to self-identify as either “pro-life” or “pro-choice.” This question tells us how someone would label their views on abortion based on their personal understanding of those terms and provides valuable insights into how the American public view the pro-life and pro-choice movements.

Gallup provides the most consistent data on this question and has found the gap close considerably over the past two decades. In a September 1995 poll by Gallup, 56% identified themselves as “pro-choice” with just 33% identifying themselves as “pro-life.” In May 2012, 50% of Americans identified as “pro-life.” The most recent Gallup poll in May 2015 found 44% “pro-choice” and 50% “pro-life.” This is only the second time since 2008 that a majority of Americans have identified themselves with the “pro-choice” label.

More revealing, however, is a question that asks respondents when they feel abortion should be illegal or legal. This question comes closer to revealing American attitudes toward *Roe* and *Doe*’s regime of unrestricted abortion, finding that only 29% agree with that position (legal under any circumstances), while 55% feel abortion should not be legal at all or legal in only a few circumstances. The online news outlet *Vox*, which can best be described as abortion apologists, found virtually identical results to a similar question.



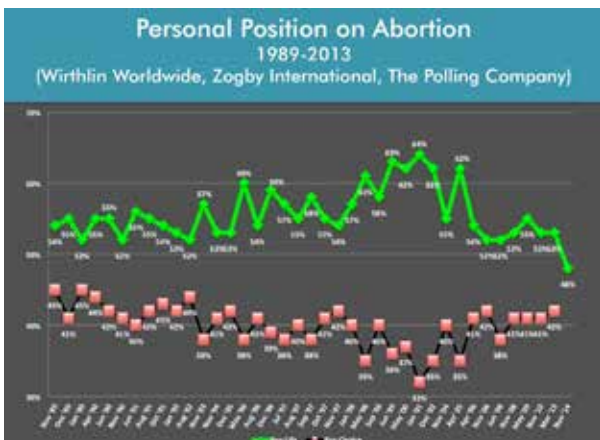


Questions like those posted by Gallup and Vox allow us to get a better snapshot of how Americans view abortion. The data found by Gallup and others, track with similar findings in polling conducted for National Right to Life over the past two and a half decades.

Beginning in 1989, National Right to Life has regularly commissioned a six-point question which explores public opinion regarding the legality of abortion by defining the circumstances in which the public believes abortion should be legal.



First asked in polling conducted by Wirthlin Worldwide, and subsequently in polls fielded by Zogby International and The Polling Company, this six-point question asks respondents: “Which of the following statements most closely describes your own position on the issue of abortion: 1) Abortion should be prohibited in all circumstances; 2) Abortion should be legal only to save the life of the mother; 3) Abortion should be legal only in cases of rape or incest, and to save the life of the mother; 4) Abortion should be legal for any reason, but not after the first three months of pregnancy; 5) Abortion should be legal for any reason, but not after the first six months of pregnancy; or 6) Abortion should be legal for any reason at any time during a woman’s pregnancy.”



In the question’s most recent fielding by The Polling Company, November 4, 2014, only 13% said their position—legal for any reason at any time during a woman’s pregnancy—matched the Roe and Doe doctrine. And only another 8% would allow abortion through the first six months of pregnancy. Thus, at most, 21% supported the effect of *Roe v. Wade*. Another 22% would allow abortion but restrict it to the first trimester. A total of 48% indicated that they would either restrict abortion in all circumstances, or allow it only when the mother’s life was

in danger, or in cases of rape or incest—reasons which account for very few abortions.

A Marist poll commissioned by the Knights of Columbus in January 2015 found similar, even stronger pro-life results. These most recent polls track with results from virtually every other poll in which the question has been asked since November 1989. A solid and steady majority of Americans disagree with the current policy that allows abortion for any reason essentially at any time during pregnancy.

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AMERICANS OPPOSE ABORTION FOR ANY REASON

Combined with the most recent Gallup poll, these results show that not only do Americans disagree with the abortion policy established by the U.S. Supreme Court in *Roe* and *Doe*, but they are becoming more willing to embrace the “pro-life” than the “pro-choice” label to describe their position.

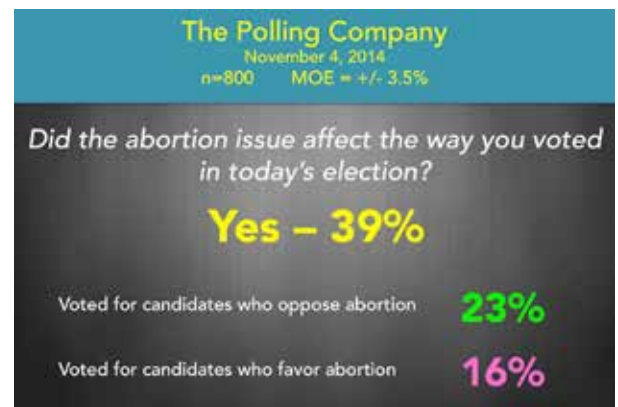
As we move into the presidential election cycle, we know that these Americans, who are embracing the need to protect unborn children and their mothers from abortion, want their elected officials to do the same and they are willing to vote their beliefs.

In November 2014, The Polling Company found that in the general election, 39% said the abortion issue affected their vote. Fully 23% voted for pro-life candidates, compared to just 16% who voted for pro-abortion candidates. Pro-life candidates enjoyed a 7% advantage over their pro-abortion opponents.

In that same election, National Right to Life’s political committees were heavily involved, and 28% of voters recalled hearing, seeing, or receiving something from National Right to Life on behalf of pro-life candidates.

As a result of this voting trend, and the involvement of National Right to Life’s political committees, the 114th Congress has pro-life majorities in both chambers, and pro-life majorities were elected in several state legislatures as well. In turn, these elected officials have been working to enact life-affirming legislation that provides legal protections for unborn children, provides help and assistance to their mothers, and challenges the abortion-for-any-reason regime established by *Roe* and *Doe*.

One such proposal is National Right to Life’s Pain-Capable Unborn Child Protection Act, a bill which would protect unborn children after 20 weeks, a point at which there is scientific evidence that the unborn child is capable of feeling pain. A nationwide poll in November 2014 conducted by Quinnipiac University found that 60% would support a law such as the Pain-Capable Unborn Child Protection Act prohibiting abortion after 20 weeks, while only 33% opposed such legislation. Women voters split 59-35% in support of such a law, while independent voters supported it by 56-36%.



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 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 on the number of abortions performed. For example, the Hyde Amendment, limiting abortion funding in Medicaid and certain other programs, has prevented well over one million abortions by even the most conservative extrapolations. Conversely, certain provisions of Obamacare, unless repealed, are likely to result in wider reliance on abortion as a method of birth control, at least in some states.

See: www.nrlc.org/uploads/ahc/ProtectLifeActDouglasJohnsonTestimony.pdf

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

Forty-three 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.

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Under the Born-Alive Infants Protection Act (PL 107-207), enacted in 2002, humans who are *born alive*, whether before or after “viability,” are recognized as full legal persons for all federal law purposes. This law says that “with respect to a member of the species homo sapiens,” the term *born alive* “means the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.” Much stronger federal protection would be provided by the Born-Alive Abortion Survivors Protection Act (H.R. 3504, S. 2066), which passed the House of Representatives in 2015 on a near-party-line vote of 248-177; it has not yet been voted on in the Senate. 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. Under certain circumstances, conviction of killing an unborn child during commission of a federal crime can subject the perpetrator to a mandatory life sentence for murder. (The majority of states have enacted similar laws, usually referred to as “fetal homicide” laws. See: www.nrlc.org/federal/unbornvictims/statehomicidelaws092302. Federal and state courts have consistently ruled that such laws in no way conflict with the doctrine of *Roe v. Wade*. See: www.nrlc.org/federal/unbornvictims/statechallenges/)

While only these few federal statutes provide direct protection for unborn children, there are no federal statutes that prevent state legislatures from enacting laws to provide broader protections from abortion for unborn children.

Certainly, pro-abortion advocacy groups have periodically campaigned for enactment of federal “abortion rights” statutes (e.g., the “Freedom of Choice Act” or, in the current Congress, the “Women’s Health Protection Act,” H.R. 448, S. 217), 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. 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 purchase of private health plans that cover abortion on demand.

Various federal laws seek to prevent discrimination against health care providers who do not wish to participate in providing abortions (often called “conscience protection” laws), but the Obama Administration has undermined enforcement of those laws and has pursued policies that are directly contrary to the principles that they embody.

Judicial Federalization of Abortion Policy

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

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

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

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

For many years after *Roe* and *Doe* were handed down, a majority of Supreme Court justices enforced this doctrine aggressively, striking down even attempts by some states to discourage abortions after “viability.” However, the reasoning contained in the most recent Supreme Court ruling directly on the substance of an abortion-related law, *Gonzales v. Carhart* (2007), upholding the federal Partial-Birth Abortion Ban Act, suggests that there is now a one-vote majority on the current Supreme Court that is open to broader protections. A number of states have adopted pro-life reforms based on that premise, as discussed in the “State Legislation” section of this report.

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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:

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 2009 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. This discussion of the significance of the “separate payment” has been rendered rather academic by the fact that it later became evident that the Obama Administration is ignoring the two-payment requirement in the law – a development that few journalists or “factcheckers” have taken note of, despite the previous credence they gave to the “two-payment” gimmick. (See “Bait-and-Switch: The Obama Administration’s Flouting of Key Part of Nelson ‘Deal’ on ObamaCare,” by Susan T. Muskett, J.D., December 9, 2013, www.nationalrighttolifeneews.org/news/2013/12/bait-and-switch-the-obama-administrations-flouting-of-key-part-of-nelson-deal-on-obamacare/.)

The Congressional Budget Office has estimated that between 2015 and 2024, \$726 billion will flow from the federal Treasury in direct subsidies for Obamacare health plans. In September, 2014, the Government Accountability Office (GAO) issued a report that confirmed that elective abortion coverage is widespread in federally subsidized plans on the Obamacare exchanges. In the 27 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/)

The No Taxpayer Funding for Abortion Act (H.R. 7, S. 582) 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

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customers who do not receive federal subsidies. The U.S. House of Representatives passed this legislation in 2011, 2014, and 2015, but it has yet to be voted on in the U.S. Senate.

On January 6, 2016, the House of Representatives gave final approval to legislation (the budget reconciliation bill, H.R. 3762), earlier approved by the Senate, that would repeal many provisions of Obamacare, including the program that provides the tax-based subsidies to plans that cover elective abortion. However, on January 8, 2016, President Obama vetoed the bill, and it is expected that this veto will be sustained.

During 2013, the Obama Administration interpreted a different provision of Obamacare to authorize the Office of Personnel Management (OPM) to collect health care premiums from members of Congress and their staffs, along with subsidies from the legislative branch bureaucracy, for purchase of private health insurance plans that cover elective abortions. The OPM (under instructions from the White House) has gone forward with this plan despite a longstanding law (the Smith Amendment) that explicitly prohibits OPM from spending one penny on administrative expenses connected with the purchase of any health plan that includes any coverage of abortion (except to save the life of the mother, or in cases of rape or incest). The Smith Amendment continues to prohibit inclusion of abortion coverage in the health plans of over 8 million federal employees and dependents—a limitation that will no longer apply to members of Congress or their staffs, solely because of Obamacare, according to the Obama Administration. See: www.nrlc.org/uploads/ahc/NRLCCommentonProposedRuleAndSmithAmendment.pdf

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 most federal programs, and the House gave final approval to this legislation on January 6, 2016. However, as noted above, President Obama vetoed this bill on January 8, 2016, and it is expected that this veto will be sustained.

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 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 will probe various aspects of the abortion industry, including trafficking in body parts, and release a report in late 2016.

U.S. funds currently also sustain abortion-promoting organizations overseas, through various foreign aid programs and contributions to U.N.-affiliate agencies such as the United Nations Population Fund. During the terms of Republican presidents Ronald Reagan, George H.W. Bush, and George W. Bush, funding of such abortion-promoting international organizations was curbed by executive actions, but the Obama Administration removed such barriers and has actively promoted expansion of abortion access around the world.

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* has 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. For examples of commentaries by legal analysts who differ greatly in philosophical perspective but who reached roughly parallel conclusions regarding the implications of *Gonzales*, see “*Gonzales, Casey, and the Viability Rule*,” by Randy Beck, associate professor, University of Georgia School of Law, 103 Nw. U. L. Rev. 249 (2009); and “*Capturing the Judiciary: Carhart and the Undue Burden Standard*,” by Khiara M. Bridges, associate professor, Boston University, 67 Wash & Lee L. Rev. 915 (2010).

In response to the *Gonzales* ruling, National Right to Life developed the model Pain-Capable Unborn Child Protection Act, which declares that 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 12 states (see page 32.)

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A federal version of the legislation (H.R. 36) was approved by the U.S. House of Representatives in May, 2015, 242-184; the Obama White House issued a veto threat on the bill. A subsequent attempt to move the House-passed bill to the Senate floor was blocked by a filibuster by Democrat senators; 54 senators voted to advance the bill, and 42 voted to obstruct it. National Right to Life has estimated that there are at least 275 abortion providers performing abortions past the point that the federal legislation would allow.

On September 15, 2015, Congressman Chris Smith (R-N.J.), co-chairman of the Pro-Life Caucus in the U.S. House of Representatives, introduced the Dismemberment Abortion Ban Act (H.R. 3515), with the strong support of National Right to Life. (H.R. 3515 is based on a model state-level bill developed by National Right to Life, which was enacted in Kansas and Oklahoma during 2015—see page 40.) 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/

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 Obama Administration has undercut enforcement of the federal conscience laws in various ways, and indeed has orchestrated attacks on conscience rights in a more sweeping and aggressive fashion than any previous administration. The Health Care Conscience Rights Act (H.R. 940, S. 1919) and the Abortion Nondiscrimination Act (ANDA, S. 50) are two pieces of legislation that would reinforce conscience rights, including establishment of a right to sue in federal court to vindicate the conscience rights protected by federal law.

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. President George H.W. Bush vetoed ten measures to protect existing pro-life policies, and he prevailed on every such issue.

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

The FOCA did win approval from committees in both the Senate and House of Representatives in early 1993, but it died without floor votes in either house when the pro-abortion lobby found, much to its surprise, that it could not muster the votes to pass the measure after NRLC 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)

In July, 2007, then-Senator Obama told Planned Parenthood, “The first thing I’d do as president is sign the Freedom of Choice Act. That’s the first thing that I’d do.” After his election, President Obama initially pushed versions of health-care legislation that contained provisions with FOCA-like effects, but those particular provisions were scaled back when abortion-related issues became a major impediment to enactment of sweeping health care restructuring legislation.

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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 NRLC 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 NRLC President Carol Tobias presented testimony explaining the radical sweep of the legislation. Following the hearing, the Judiciary Committee took no further action on the bill during the 113th Congress. It has been reintroduced in the 114th Congress as H.R. 448 and S. 217.

(For further details, including links to the Tobias testimony, see “U.S. Senate Democrats launch push for ‘the most radical pro-abortion bill ever considered by Congress’,” www.nrlc.org/communications/releases/2014/release071514).

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 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*.)

U.S. Supreme Court Agrees to Hear Abortion-Related Case in 2016 Term

As widely, but not universally expected, the United States Supreme Court agreed in November 2015 to take up a lawsuit brought by a coalition of abortion providers that challenges two provisions of H.B. 2, an omnibus 2013 Texas law.

At issue in *Whole Woman’s Health v. Cole* are two provisions: (1) that abortion clinics meet the same building standards as ambulatory surgical centers (ASCs); and (2) that abortionists have admitting privileges at a nearby hospital for situations of medical emergencies. The latter has already gone into effect. The U.S. Supreme Court, pending final decision, temporarily enjoined

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the ‘admitting privileges’ provision of the law only as it applies to clinics in McAllen and El Paso. The admitting privileges rule remains in effect elsewhere in Texas.

Austin-based U.S. District Judge Lee Yeakel declared the requirements unconstitutional, but was reversed by the U.S. Court of Appeals for the 5th Circuit. (It is important to note that pro-abortion groups never challenged the Pain-Capable Unborn Child Protection Act language in HB2. Also not before the justices is a provision that requires the abortionist to be in the same room as the woman receiving the chemical abortifacients (which is not the case with so-called ‘web-cam’ abortions) and that abortionists follow the protocol approved by the FDA for the use of the two-drug “RU-486” abortion technique.

HB2 is best known to outsiders as the bill pro-abortion state Sen. Wendy Davis filibustered in 2013. Although pro-life Gov. Rick Perry quickly called a special session and the bill was signed into law, Davis used the enormous publicity as a springboard to what turned out to be a disastrous campaign to succeed Perry.

As the *Houston Chronicle’s* Brian M. Rosenthal wrote in November, U.S. District Judge Lee Yeakel of Austin “has twice struck down parts of the law, but both of those decisions have been reversed by a New Orleans-based federal appeals court [the 5th U.S. Circuit Court of Appeals]. The law took effect temporarily before being put on hold by the U.S. Supreme Court.”

By contrast, under Mississippi’s H.B. 1390, passed in 2012, abortionists are required to have admitting privileges at a local hospital, but, unlike Texas’s H.B. 2, the law does not require that abortion clinics meet the standards of ambulatory surgical centers.

At the eleventh hour Judge Daniel P. Jordan temporarily blocked Mississippi from enforcing the law and extended the restraining order in 2013. On July 29, 2014, a different three-judge panel of the 5th U.S. Circuit Court of Appeals blocked the state from enforcing the law. The panel split 2-1. An appeal in this case is pending before the U.S. Supreme Court and will likely be put on hold pending the outcome in the Texas case.

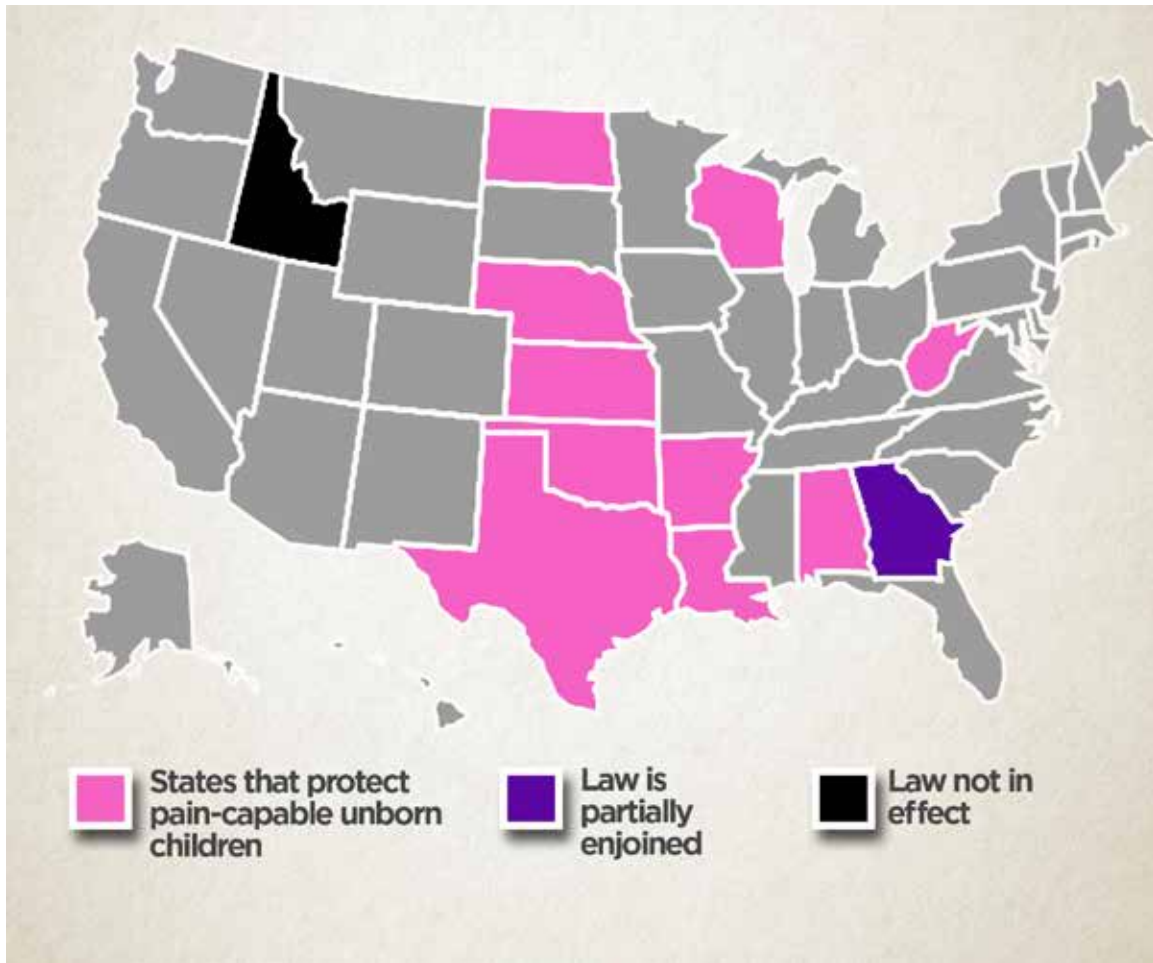
Oral arguments in *Whole Woman’s Health v. Cole* are scheduled for March 2, 2016 and a decision is expected later in the term — right in the middle of the presidential contest.

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.

THE STATE OF ABORTION IN THE UNITED STATES

PAIN-CAPABLE UNBORN CHILD PROTECTION ACT



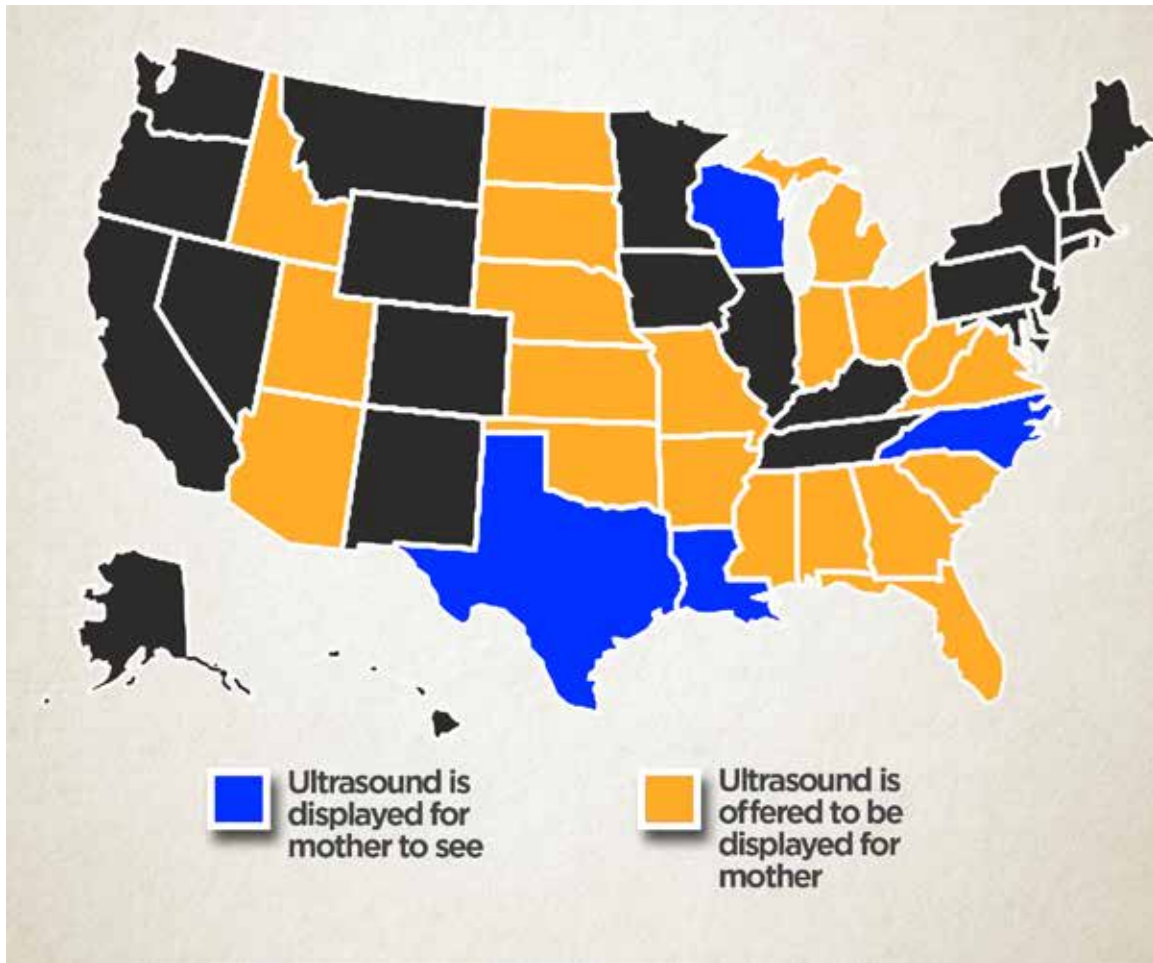
First enacted by the state of Nebraska in 2010, the model Pain-Capable Unborn Child Protection Act, drafted by National Right to Life's Department of State Legislation, is legislation which protects from abortion unborn children who are capable of feeling pain. There has been an explosion in scientific 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, Louisiana, Nebraska, North Dakota, Oklahoma, Texas, West Virginia, and Wisconsin.

*These laws were challenged in court. Idaho is enjoined and Georgia is partially enjoined, pending litigation.

THE STATE OF ABORTION IN THE UNITED STATES

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.

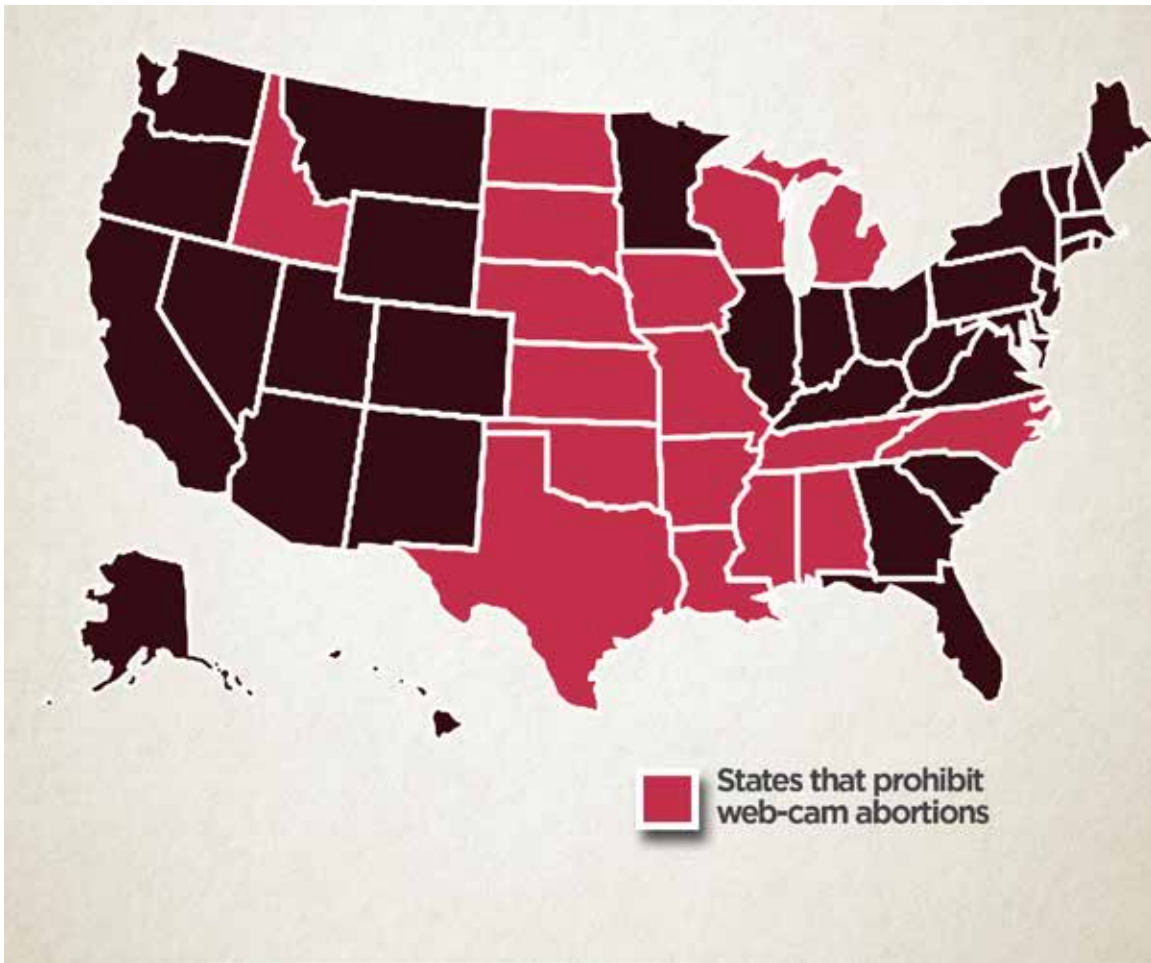
Four states require that an ultrasound be performed prior to an abortion. The screen must be displayed so the mother can view it and a description of the image of the unborn child must be given. They are Louisiana, North Carolina*, Texas, and Wisconsin.

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

*North Carolina is enjoined.

THE STATE OF ABORTION IN THE UNITED STATES

WEB-CAM ABORTIONS PROHIBITED



“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.

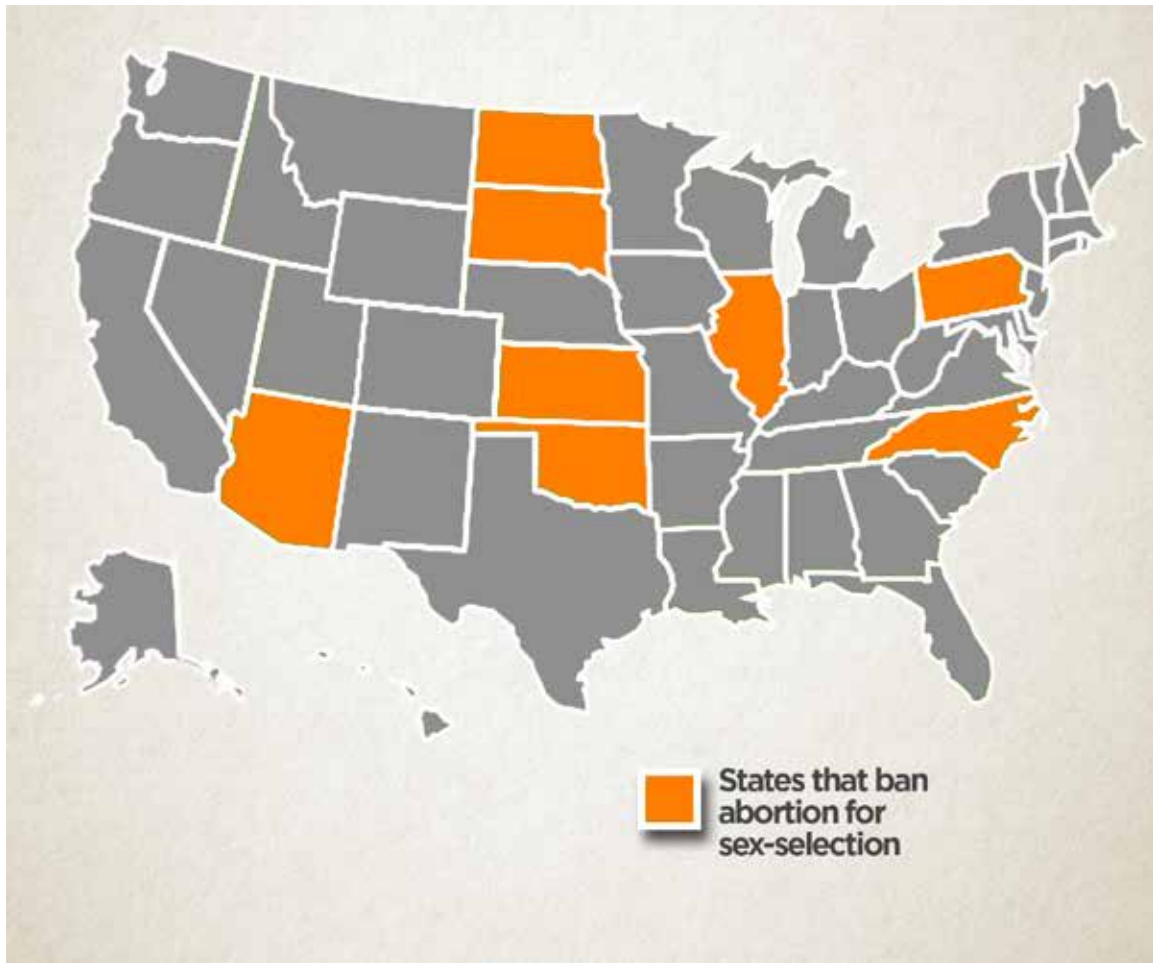
This important pro-life legislation prevents web-cam abortions by requiring that, when RU-486 or some other drug or chemical is used to induce an abortion, the abortion doctor who is prescribing the drug must be physically present, in person, when the drug is first provided to the pregnant woman. This 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 19 states prohibit these “web-cam” abortions: Alabama, Arizona, Arkansas, Idaho, Indiana, Iowa*, Kansas*, Louisiana, Michigan, Mississippi, Missouri, Nebraska, North Carolina, North Dakota*, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

*Iowa, Kansas, and North Dakota laws are currently enjoined.

THE STATE OF ABORTION IN THE UNITED STATES

BANS ON ABORTION FOR SEX-SELECTION



These laws protect unborn babies from being aborted on account of their sex. 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 eight (8) states have enacted laws protecting unborn children who would be aborted solely because of their gender.

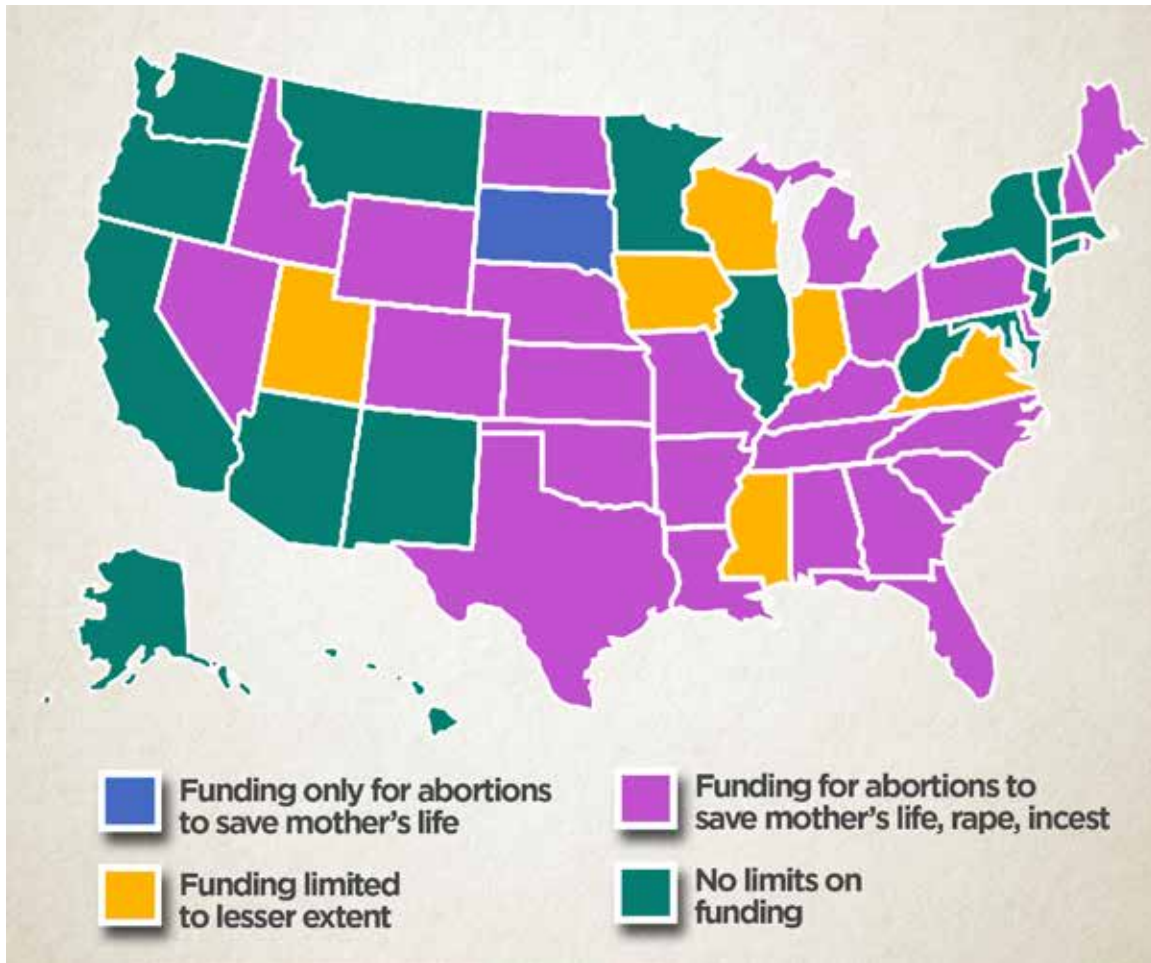
State Laws (in order of enactment)

Illinois-1975*
Pennsylvania-1982
Oklahoma-2010
Arizona-2011
North Dakota-2013
Kansas-2013
North Carolina-2013
South Dakota-2014

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

THE STATE OF ABORTION IN THE UNITED STATES

STATE POLICIES ON PUBLIC FUNDING OF ABORTION



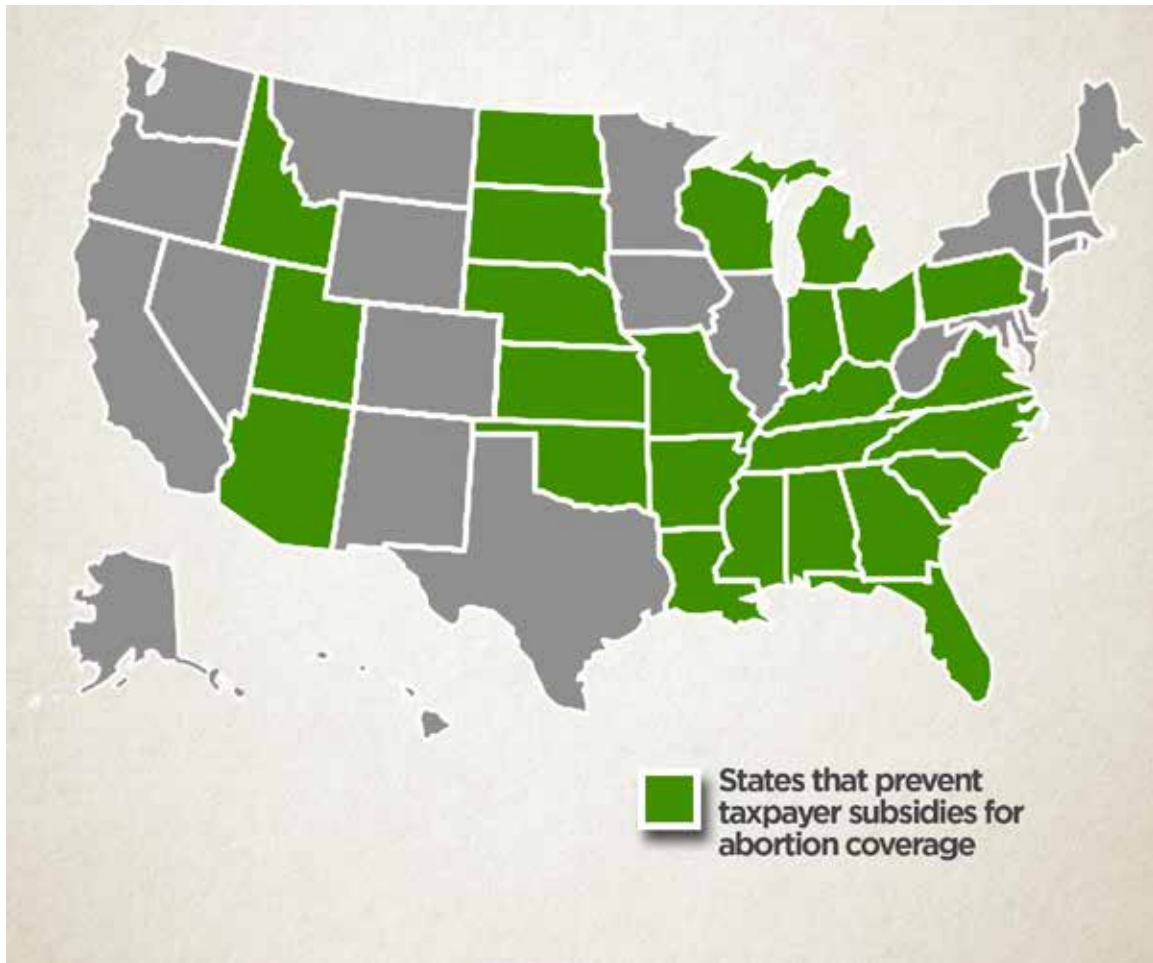
Prior to the enactment of the Hyde Amendment in 1976, the federal government paid for abortions through the Medicaid program. Between 1976 and 1980, the Hyde Amendment was enacted in several different forms. (During part of this period, its enforcement was blocked by federal court orders.) From June 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 on South Dakota limits Medicaid coverage to life-endangerment cases.

Currently, 17 states have no limits on Medicaid funding of abortions (of these, 13 are due to court decisions). Twenty-six (26) states limit funding to cases of life endangerment, rape, and incest; six states limit abortion funding to a lesser extent.

THE STATE OF ABORTION IN THE UNITED STATES

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.

States that substantially restrict 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, Utah, Virginia, and Wisconsin.

In addition, the following states prohibit elective abortion coverage for plans outside of the health insurance exchange: Idaho, Indiana, Kansas, Kentucky, Michigan, Missouri, Nebraska, North Dakota, Oklahoma, Pennsylvania, Rhode Island, and Utah.

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

(Note: some of the state laws permit coverage for elective abortion through the purchase of a premium rider.)

THE STATE OF ABORTION IN THE UNITED STATES

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 are as brutal as the partial-birth abortion method, which is now illegal in the United States.

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, it is asking the court to apply, as it did in the 2007 *Gonzales* case, the compelling interest a state has in protecting the integrity of the medical profession and also to again 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.



THE PRESIDENTIAL RECORD ON LIFE

President Barack Obama 2009-present

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

- **Supreme Court:** President Obama appointed Elena Kagan (2010) and Sonia Sotomayor (2009) to the U.S. Supreme Court. As a key political aide to President Clinton, Kagan helped direct a political strategy preventing enactment of a ban on partial-birth abortions during the Clinton Administration. Sotomayor had previously helped direct the litigation projects of a private organization that filed multiple pro-abortion lawsuits, including challenges to parental notification requirements.
- **Health care law:** In 2009-2010, after the House of Representatives approved an amendment to prevent funding of abortion in a massive health-care bill, President Obama helped defeat the pro-life amendment in the Senate. He subsequently won enactment of a health care law (“ObamaCare”) that will result in federal funding of health plans that pay for elective abortion and that will lead to large-scale rationing of lifesaving medical treatments.
- **Funding Abortion Providers:** President Obama indicated he would veto the entire federal spending bill — forcing a government shutdown — rather than accept a provision cutting funding to Planned Parenthood, the nation’s largest abortion provider. The Obama Administration later blocked efforts by several states to cut off government funds to Planned Parenthood. In December 2015, he vetoed a bill that would have halted most federal funding to Planned Parenthood for one year.
- **Embryo-Destroying Research:** In March 2009, President Obama issued an executive order to allow federal funding of research that requires the killing of human embryos.
- **Abortion Funding:** In 2011, the Obama White House issued formal veto threats against the Protect Life Act, a bill that would repeal the abortion-expanding provisions of the 2010 ObamaCare law, and the No Taxpayer Funding for Abortion Act, a bill to permanently prohibit any federal program from funding elective abortions. President Obama also succeeded, for 16 months, in removing a ban on government-funded abortion on demand in the District of Columbia.
- **International Abortion Advocacy:** In 2009, President Obama issued an order to fund private organizations that perform and promote abortion overseas. His choice as Secretary of State, Hillary Clinton, later told Congress that the Administration would advocate world-wide that “reproductive health includes access to abortion.”
- **Appointments:** President Obama appointed Kathleen Sebelius, a long-time opponent of curbs on abortion (including late abortions), as Secretary of Health and Human Services. President Obama has also appointed many other persons with histories as pro-abortion advocates to high government offices.
- **Conscience Protection:** In February 2011, the Obama Administration rescinded a regulation that had been issued by the Bush Administration, which would have protected health-care providers from being penalized for refusing to participate in providing abortions. In 2012, the Administration issued a “final rule” to force many groups, including religious schools and hospitals, to provide health plans covering certain drugs and procedures, even if it violates their religious and moral convictions.



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 in 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 prevents 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 .
- 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 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, 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 also authorize non physicians to perform abortions.

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

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

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

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

THE STATE OF ABORTION IN THE UNITED STATES

THE SUPREME COURT AND ABORTION

Poelker v. Doe (1977)

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

Colautti v. Franklin (1979)

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

Bellotti v. Baird (II)* (1979)

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

Harris v. McRae (1980)

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

Williams v. Zbaraz (1980)

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

HL v. Matheson (1981)

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

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

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

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

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

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 pre-viability 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

THE STATE OF ABORTION IN THE UNITED STATES

THE SUPREME COURT AND ABORTION

measures to ensure that the woman's choice is informed, and measures designed to advance this interest will not be invalidated as long as their purpose is to persuade the woman to choose childbirth over abortion. These measures must not be an undue burden on the right." Applying this "undue burden" doctrine, the Court explicitly overruled parts of *Akron* and *Thornburgh*, and allowed informed consent requirements (that the woman be given information on the risks of abortion and on fetal development), a mandatory 24-hour waiting period following receipt of the information, the collection of abortion statistics, and a required one-parent consent with judicial bypass. A spousal notification requirement, however, was held to be unconstitutional.

***Mazurek v. Armstrong* (1997)**

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

***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.

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 Founding Fathers 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 50 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 50 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 3,000 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: Through the work of the Robert Powell Center for Medical Ethics, National Right to Life fights rationing of health care on a national level, such as in the context of Medicare legislation or more general health care reform. National Right to Life speaks out against efforts by the pro-death movement to legalize assisting suicide and euthanasia 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.

ABOUT NATIONAL RIGHT TO LIFE: THE NATION'S OLDEST & LARGEST PRO-LIFE GROUP

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, and the nation's largest non-partisan, 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 and advertisements.
- **outreach efforts** to groups affected by society's lack of respect for human life: the disability rights community; the post-abortion community; the Hispanic and African-American communities; the community of faith; and the Roe generation – young people who are missing brothers, sisters, classmates and friends.
- **National Right to Life NEWS** – published daily Monday-Saturday and available at www.nationalrighttolifeneeds.org, is the pro-life news source of record providing a variety of news stories and commentaries about right-to-life issues in Washington and around the country.
- the **National Right to Life website**, www.nrlc.org, which provides visitors the latest, most up-to-date information affecting the pro-life movement, as well as the most extensive online library of resource materials on the life issues.

This report may be downloaded from the National Right to Life website at:
www.nrlc.org/uploads/communications/stateofabortion2016.pdf.



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