



## **Post-Roe America**

Immediately after *Roe* was decided in 1973, abortion opponents urged state and federal lawmakers to pass anti-abortion laws.

Over the next three decades, the Supreme Court was repeatedly called upon to decide whether a wide range of abortion statutes violated a woman's right to privacy. These included major changes after the *Webster* and *Casey* rulings.

The number of abortions in the U.S. has thus been steadily declining ever since the *Roe* ruling, as restrictions on abortion access have significantly increased.

At the Red River Women's Clinic in Fargo, N.D., the only abortion clinic in North Dakota, a woman must wait 24 hours before scheduling an appointment and arriving at the facility. Once there, she must undergo a counseling, verification, and testing process that lasts up to five hours. If she is a minor, she must notify her parents; get permission from one or both, depending on who has custody; or get approval from a judge. Like Medicaid programs in some 30 other states, North Dakota's does not cover abortion services except in instances of rape or incest or to protect the life of the mother.

In the past three decades, laws like the ones that govern appointments at Red River have been passed with regularity as pro-life state legislators have redrawn the boundaries of legal abortion in the U.S.

In 2011, 92 abortion-regulating provisions – a record number – passed in 24 states after Republicans gained new and larger majorities in many state legislatures across the country. In the past decade, state legislatures have passed more than 400 laws limiting access to abortion. These laws made it harder every year to exercise a right heralded as a crowning achievement of the 20<sup>th</sup> century women's movement.

### **Reality Check**

The front cover of TIME magazine from January 14, 2013 stated: "40 years ago, abortion-rights activists won an epic victory with *Roe v. Wade*. They've been losing ever since." This is the reality of abortion in the U.S. It is a legal surgical operation, and yet record numbers of restrictions continue to make it harder and harder for a woman to have an abortion in the U.S. Getting an abortion in America is, in some places, harder today than at any point since it became a constitutionally protected right 40 years ago.

While the right to have an abortion is federal law, exactly who can access the service and under what circumstances is the purview of states. And at the state level, abortion-rights activists are unequivocally losing.

The modern era of state restrictions on abortion began in 1992 with the Supreme Court's decision in *Planned Parenthood v. Casey*. The court upheld *Roe v. Wade*, but said states have a right to regulate abortion as long as they don't write laws that impose an "undue burden" on women.

In this atmosphere, the number of abortion providers nationwide has shank from 2,908 in 1982 to 1,793 in 2008.

Five states – North Dakota, South Dakota, Wyoming, Mississippi, and Arkansas – now have just one surgical-abortion clinic in operation.

As memories of women dying from illegal pre-Roe abortions become more distant, the pro-choice cause is in crisis.

## **Violence**

With these changes came an outburst of violence and harassment from the extremist wing of the pro-life movement.

Since the *Roe v. Wade* decision legalized abortion in 1973, reproductive health clinics and health care providers across the United States and Canada have become the targets of violence by anti-abortion extremists. Physicians and clinic workers have been murdered; clinics have been bombed, burned down, invaded, and blockaded; and patients have been harassed and intimidated.

The National Abortion Federation has been compiling statistics on incidents of violence and disruption against abortion providers since 1977.

The year 1993, 20 years after *Roe v. Wade* was decided, was an exceptionally active year for radical abortion opponents. Not only were there 452 acts of violence against abortion providers and 66 clinic blockades, but also killing abortion providers became a tactic of the anti-choice movement for the first time. On March 11, 1993, Michael Griffin stationed himself behind the Pensacola Women's Medical Services clinic in Florida and shot Dr. David Gunn, the clinic's founder and abortion provider, in the back as he was leaving the building.

Gunn was a recognizable figure partly because Operation Rescue, a pro-choice extremist group, had put his face and phone number on a "Wanted" poster and displayed it at a rally in Alabama.

The first murder of an abortion provider by an anti-choice extremist, the Gunn killing outraged the public and pro-choice leaders.

Matt Trehwella, however, an anti-choice extremist involved with the group Missionaries to the Unborn, said he "would not condemn someone who killed Hitler's doctors ... and neither will I condemn Michael Griffin."

Griffin was found guilty of the murder, and the judge sentenced him to life in prison.

The Gunn case spurred Congress to pass the federal Freedom of Access to Clinic Entrances Act (FACE) in 1994, which imposed federal prison terms and heavy fines against protesters who block access to clinics. It specifically prohibited the actions of anyone who “by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person...obtaining or providing reproductive health services.”

FACE protected a facility or anybody who worked at a facility that provided reproductive health services, patients of facilities that provide reproductive health services, and people accompanying patients, such as a parent, partner, or clinic escort.

At the bill signing President Bill Clinton said, "No person seeking medical care, no physician providing that care should have to endure harassments or threats or obstruction or intimidation or even murder from vigilantes who take the law into their own hands.”

Besides FACE, several states have enacted Buffer Zone Laws, including Colorado, Massachusetts, and Montana.

In Colorado, within 100 feet of any health care facility entrance, patients cannot be approached within 8 feet without consent for the purpose of leafleting, displaying a sign, or engaging in conversation. In Massachusetts, an 18-foot buffer zone exists around clinic entrances. Within the buffer zone, protesters must stay at least 6 feet away from clinic workers and patients. In Montana, a 36-foot buffer zone exists, within which protesters must remain 8 feet away from patients and clinic workers.

Violence against abortion clinics and doctors did not stop with Michael Griffin and Dr. Gunn, though.

Paul Hill, a Presbyterian minister, went on live television to proclaim Griffin's act "justifiable homicide."

He wrote a manifesto he called "Defensive Action" and got some three dozen people to sign it.

Among them: John Brockhoeft, a Kentucky protester who was arrested on his way to the Pensacola Ladies Center with bombmaking materials in 1988; the Rev. Michael Bray, of Bowie, MD, who served four years in prison for bombing seven clinics; and the Rev. Donald Spitz of Chesapeake, Va., who created the militant anti-abortion Army of God web site.

Hill protested outside of Pensacola-based Ladies Center, favoring a huge sign: "Execute Murderers, Abortionists, Accessories." He would go on clinic property and scream at the waiting room, "Mommy, Mommy, please don't kill me."

In July 1994, Hill killed abortion doctor John Bayard Britton with a shotgun outside the Ladies Center in Pensacola, Florida.

Hill gave himself up to the police, saying he had killed Dr. Britton to prevent “innocent babies” from dying. Hill called it justifiable homicide. He said he wanted to stop the abortions that day and spark a revolution that would end all abortions in America.

"The way Paul Hill looks at it, at the end of the day, 25 babies were alive instead of being dead," says Rev. Donald Spitz.

In 2003, the state of Florida executed Hill, making him the first person executed for murdering an abortion doctor. Before his execution, Hill said, “I believe the state, by executing me, will be making me a martyr,” and said he would kill again to save unborn children if given the chance.

Death threats were made against Florida Gov. Jeb Bush, Attorney General Charlie Crist, prison officials and the judge who sentenced Hill.

But violence has not been limited to just Florida.

On December 30, 1994, John C. Salvi III, a 22-year-old from New Hampshire stepped into a Planned Parenthood clinic in Brookline, MA, shortly before 10 a.m., pulled a .22 caliber rifle from a black duffel bag, and began shooting. He killed two receptionists instantly, and wounded five other people.

He fled the state and on the morning of January 1, 1995, Salvi pulled another rifle from another duffel bag and opened fire on the Hillcrest Clinic in Norfolk, VA, shattering glass but causing no injuries.

Salvi was convicted and sentenced to two life terms for the murders.

On October 23, 1998 in Buffalo, New York, Dr. Barnett Slepian was warming soup in his kitchen with his wife and one of his sons, when James Kopp fired a single bullet through his kitchen window, hitting him in the back. He died two hours later. He was 52.

James Kopp had never met Slepian. But this “anti-choice terrorist” killed him because he knew that Slepian provided abortion services at the Buffalo GYN Women's Services clinic.

Reaction to the shooting was instant and outraged. Planned Parenthood Federation of America President Gloria Feldt called the killing "evil terrorism." New York Governor George Pataki said, "It's beyond a tragedy — it's really an act of terrorism and, in my mind, a cold-blooded assassination." The Reverend Flip Benham, then the national director of the anti-choice group Operation Rescue, refused to condemn the murder.

Kopp was convicted of second-degree murder and sentenced to 25 years to life in state prison, a term he is currently serving.

Kopp did not act alone, though. He was reportedly a member of the underground network “Army of God,” a terrorist network that has been linked to the bombing of an abortion clinic and a gay bar in Georgia, the kidnapping of an Illinois abortion provider, hundreds of anthrax threats to abortion clinics and a host of other violent incidents. The group considers itself to be fighting

a war against the US government – in the words of anti-abortion activist Neal Horsley, “the war that had gone undeclared in this nation ever since 1973 when the government of the USA in *Roe v. Wade* effectively declared war against the children of God.”

Horsley started the infamous Nuremberg Files in 1995, a website which features a list of names and addresses of doctors and other staff that work at abortion clinics. As the website says, “Our goal is to record the name of every person working in the baby slaughter business across the United States of America... so we can punish these people for slaughtering God’s children.”

Seeing it as a “hit list,” the site was legally shut down in 2002, but Horsley remains active in the anti-abortion fight.

In early 1999, Nicholas Morency, then 28, who lived in Cape May County, NJ, created a Web site that offered a \$1.5 million bounty to anyone who would kill an abortion provider. It was the first time a reward had been offered for the murder of an abortion provider.

Approximately a month later, the FBI shut down the site and eventually arrested Morency.

In May 2009, Dr. George Tiller, a well-known abortion doctor in Kansas, was shot and killed while handling out programs as an usher in church in Wichita.

Dr Tiller was one of the only doctors in the nation who performed late second and third-trimester abortions when the life or health of a mother was at stake. As result of his willingness to perform so-called late-term abortions, he had been vilified by anti-abortionists in the US.

His Kansas women’s clinic - the Women's Health Care Services – is one of just three in the nation where abortions are performed after the 21<sup>st</sup> week of pregnancy. Kansas law allows abortions on viable fetuses after the 21st week if carrying the pregnancy to term would endanger the mother's life or cause a "substantial and irreversible impairment" of a major bodily function. Courts have interpreted a "major bodily function" to include mental health. Under Kansas law, late-term abortions can be performed only if two independent doctors agree that not to do so would put the mother at risk of irreparable harm by giving birth.

The clinic had often been the site of numerous demonstrations, from being bombed in 1986 to Dr. Tiller being shot and wounded outside of it in 1993. In that shooting, Dr. Tiller was shot and wounded through both arms, but survived. Shelley Shannon, an ardent foe of abortion, was convicted of attempted murder in the shooting.

The clinic is fortified with bulletproof glass, and Tiller hired a private security team to protect the facility. Once outside the clinic, Tiller was routinely accompanied by a bodyguard. He was even wearing a bullet proof jacket when he was killed, but he was shot in the head.

Tiller "dedicated his life to providing women with high-quality health care despite frequent threats and violence," his family said in a written statement.

Scott Roeder, who was found guilty in the shooting of Dr. Tiller, referred to Dr. Tiller’s clinic as a “death camp” on Operation Rescue’s website before the shooting.

Fox News talk show host, Bill O'Reilly, regularly called him "Tiller the Killer" and described his clinic as a "death-mill". "This man is executing babies about to be born," O'Reilly said on one show. "This is the kind of stuff that happened in Mao's China, Hitler's Germany, Stalin's Soviet Union," he said on another. O'Reilly also warned that Tiller will face "judgment day".

Randall Terry, founder of the largest anti-abortion group, Operation Rescue, said "George Tiller was a mass-murderer. He was an evil man, his hands were covered with blood. And we still must call abortion by its proper name; murder." Dave Leach, editor of an anti-abortion newsletter, Prayer and Action News, said "There is Christian scripture that would support this."

Neal Horsley, who publishes what is widely regarded as a hit list of medics and openly advocates the execution of women who have terminations, regards George Tiller's killing as "justifiable homicide" on behalf of the unborn and refers to Scott Roeder as a "soldier in a war". Horsley said after the murder that "Tiller was a terrorist," and that Roeder was just a soldier fighting terrorism.

"I certainly believe that under the circumstances that Tiller went through, where there's no question about anything except the fact that he was making a lot of money over the killing of these babies, I would have sought the death penalty in his case. And probably would seek the death penalty in the case of any mother who decided to kill her child."

"The main difference between the American anti-abortion movement and the Taliban is 8,000 miles," said Dr. Warren Hern, a last late-term abortion doctor in Boulder, Colorado. Hern is guarded by two armed US marshals at his fortified clinic, and the windows of the clinic are bulletproof after someone fired five shots through the front a few years ago. Access is through a reinforced door after photo identification is checked.

Says Hern, "Horsley wants me dead. They do not believe in the American legal system, they do not believe in the constitution, they do not believe in freedom. They don't want justice. They don't want a trial. They want death."

"This is a national terrorist, totalitarian, fascist movement that is violent, well organized and well armed and they do not accept the basic premises of American society." He went on to say in January 2010, "It is my view that we are dealing with a fascist movement. It's a terrorist, violent terrorist movement, and they have a fascist ideology..."

"People don't get it," he says in January 2010. "After eight murders, 17 attempted murders, 406 death threats, 179 assaults, and four kidnappings, people are still in denial. This was a cold-blooded, brutal, political assassination that is the logical consequence of 35 years of hate speech and incitement to violence by people from the highest levels of American society... They use this issue to get power."

"This is not a debate, it's a civil war. And the other people are using bullets and bombs." He called the murder of Dr. Tiller a "brutal, cold-blooded, premeditated political assassination" that was an "inevitable and predictable result of over 35 years of rabid anti-abortion harassment, hate rhetoric, violence..."

In the 1960s in medical school, Dr. Hern saw his first botched abortions. Then he spent two years as a doctor for the Peace Corps in a Brazilian town so desperately poor, it wasn't unusual to see a dead baby on a rubbish heap. After that, he worked as a family-planning chief for the Nixon administration and spent some time in Appalachia, where he saw unintended pregnancies dragging families deeper and deeper into poverty.

Dr. Hern's Boulder clinic's services are advertised as "Specializing in late abortion for fetal disorders. Outpatient abortion over 26 menstrual weeks for selected patients with documented fetal anomaly, fetal demise, or medical indications."

As of October 2014, Dr. Hern is one of just four late-term abortion doctors in the entire U.S., and all are former colleagues of Dr. Tiller. The other doctors are LeRoy Carhart, Susan Robinson and Shelley Sella.

They are scattered across the country - 71-year-old Carhart in Maryland, 74-year-old Hern in Colorado, and Robinson and Sella, both in their 60s, working out of the same clinic in Albuquerque, New Mexico.

Over the years, pro-life activists have targeted Carhart's horse stables, burning it and killing 21 horses; they've made hate phone calls to Hern's mother, who is in her 90s, and shot out the windows of his office. All four doctors have received death threats.

"If not us, who will do it?" says Carhart. "At the end of the day, it is about healthcare. We are providing a service to women."

<http://www.bbc.co.uk/news/magazine-21207787> (short video clip of Dr. Shelby Sella)

## **Federal Legal Restrictions**

In 1999, the United States Congress passed a ban on intact dilation and extraction, a late-term abortion procedure that has been labeled "partial birth abortion" by opponents of legal abortion. President Bill Clinton vetoed it, though.

In 2003, the federal abortion ban bill was passed by Congress again and this time was signed into law by President Bush. Known as the Partial-Birth Abortion Ban Act of 2003, it was the first federal legislation to criminalize abortion. The law, which does not contain an exception for the woman's health, makes it a federal crime to take certain steps when performing a second-trimester abortion using this specific procedure.

Congress found that a moral, medical, and ethical consensus exists that the practice of performing a partial-birth abortion "is never medically necessary and should be prohibited." The law provides for fines and imprisonment for physicians who violate the statute.

The statute, however, does not totally prohibit partial-birth abortion. It allows the procedure when "necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself."

The law made its way to the Supreme Court, and on April 18, 2007, in *Gonzales v. Carhart* (2007) and *Gonzales v. Planned Parenthood Federation of America, Inc.* (2007), the Supreme Court, in a 5-4 decision, upheld the Partial-Birth Abortion Ban Act of 2003.

In upholding the ban, the court effectively overruled a key component of *Roe* that it had previously affirmed again and again — that a woman's health must be the paramount concern in laws that restrict abortion access. Retreating from this core principle, the Supreme Court allowed Congress to ban certain second-trimester abortion procedures that doctors and major medical organizations, including the American College of Obstetricians and Gynecologists, believe are sometimes the safest and best to protect women's health.

Another key part of the abortion debate is the Unborn Victims of Violence Act of 2004. This US law which recognizes a "child in utero" as a legal victim, if he or she is injured or killed during the commission of any of over 60 listed federal crimes of violence. The law defines "child in utero" as "a member of the species homo sapiens, at any stage of development, who is carried in the womb."

The Unborn Victims of Violence Act was first introduced in Congress in 1999, but it failed to be passed by the Senate. In 2003, the bill was reintroduced in the House and was eventually passed by the House and Senate in 2004. It was then signed into law by President Bush on April 1, 2004.

Bush said, "Any time an expectant mother is a victim of violence, two lives are in the balance, each deserving protection, and each deserving justice. If the crime is murder and the unborn child's life ends, justice demands a full accounting under the law." Senator John Kerry voted against the bill, saying, "I have serious concerns about this legislation because the law cannot simultaneously provide that a fetus is a human being and protect the right of the mother to choose to terminate her pregnancy."

The law applies only to certain offenses over which the United States government has jurisdiction, including certain crimes committed on Federal properties, against certain Federal officials and employees, and by members of the military. In addition, it covers certain crimes that are defined by statute as federal offenses wherever they occur, no matter who commits them, such as certain crimes of terrorism.

Because of principles of federalism embodied in the United States Constitution, Federal criminal law does not apply to crimes prosecuted by the individual states. However, 37 states also recognize the fetus or "unborn child" as a crime victim, at least for purposes of homicide or feticide.

The legislation was both hailed and vilified by various legal observers who interpreted the measure as a step toward granting legal personhood to human fetuses, even though the bill explicitly contained a provision excepting abortion, stating that the bill would not "be construed to permit the prosecution" "of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf", "of any person for any medical treatment of the pregnant woman or her unborn child" or "of any woman with respect to her unborn child."

Rennie Gibbs of Mississippi became pregnant aged 15, but lost the baby in December 2006 in a stillbirth when she was 36 weeks into the pregnancy. When prosecutors discovered that she had a cocaine habit, they charged her with the "murder" of her child, which carried a mandatory life sentence.

Gibbs was the first woman in Mississippi to be charged with murder relating to the loss of her unborn baby. But her case is by no means isolated. Across the US more and more prosecutions are being brought that seek to turn pregnant women into criminals.

Bei Bei Shuai, 34, was charged with murdering her baby in Indiana. In December 2010 she tried to commit suicide by taking rat poison after her boyfriend abandoned her.

Shuai was rushed to hospital and survived, but she was 33 weeks pregnant and her baby, to whom she gave birth a week after the suicide attempt and whom she called Angel, died after four days. Shuai was charged with murder.

Women's rights campaigners see the creeping criminalization of pregnant women as a new front in the culture wars over abortion, in which conservative prosecutors are chipping away at hard-won freedoms by stretching protection laws to include fetuses, in some cases from the day of conception.

"If it's not a crime for a mother to intentionally end her pregnancy, how can it be a crime for her to do it unintentionally, whether by taking drugs or smoking or whatever it is," Robert McDuff, a civil rights lawyer said.

At least 38 of the 50 states across America have introduced fetal homicide laws that were intended to protect pregnant women and their unborn children from violent attacks by third parties – usually abusive male partners – but are increasingly being turned by renegade prosecutors against the women themselves.

### **State Legislative Restrictions and TRAP Laws**

Individual states have even started the process of enacting increasingly strict abortion restrictions in their state legislatures.

"Twenty years ago, we'd storm a clinic and close it down for a day – and then I'd get thrown in jail," says Troy Newman, the president of Operation Rescue, the infamous Kansas-based anti-abortion group that made its name during the 1980s and early 1990s by blocking the entrances to clinics and holding noisy sit-ins – a practice Congress outlawed in 1994. Other tactics, which ranged from handing out pamphlets emblazoned with the image of aborted fetuses, to "naming and shaming" the friends and associates of abortion providers, proved equally unfruitful. "All of that just made the community angry – at me, at the clinic," says Newman. "And I hated that. I don't want to wave pictures on the street just to piss people off. I want to win." So Newman stopped the overt harassment, and settled on a new plan to push for TRAP laws ("Targeted Regulations of Abortion Providers") and document alleged abuses at abortion clinics and report them to the authorities.

This new approach for states to individually challenge and restrict abortion providers and access in their state has been wildly successful for the pro-life movement.

### *Waiting Periods*

In March 2011, South Dakota's Gov. Dennis Daugaard signed into law an act where women who want an abortion in the state will face the longest waiting period in the nation – three days.

About half the states, including South Dakota, now have 24-hour waiting periods, but the state's new law is the first of its kind in having a three-day waiting period and requiring women to seek counseling at pregnancy help centers.

The law says an abortion can only be scheduled by a doctor who has personally met with a woman and determined she is voluntarily seeking an abortion. The procedure can't be done until at least 72 hours after that first consultation. Before getting an abortion, a woman also will have to consult with a pregnancy help center to get information about services available to help her give birth and keep a child.

What makes this even more stringent is that South Dakota's 72-hour wait can sometimes extend even longer because weekends and holidays are not counted.

This new law could create particular hardships for women who live in rural areas hundreds of miles from the state's only abortion clinic in the city of Sioux Falls.

Prior to this new law, South Dakota already had a 24-hour waiting period for abortions and laws mandating that a woman be offered the opportunity to view a sonogram of her fetus.

Those restrictions play into South Dakota having the lowest abortion rate in the country, according to statistics from the Guttmacher Institute and the Centers for Disease Control.

Approximately one out of seven women in South Dakota seeking an abortion already leaves the state for the procedure, according to the Centers for Disease Control Abortion Surveillance report in 2007.

"I think everyone agrees with the goal of reducing abortion by encouraging consideration of other alternatives," South Dakota's Gov. Dennis Daugaard said. "I hope that women who are considering an abortion will use this three-day period to make good choices."

Missouri joined South Dakota by also passing a 72-hour waiting period in September 2014. The vote by Missouri's Republican-led Legislature overruled the veto of Democratic Gov. Jay Nixon, who had denounced the measure as "extreme and disrespectful" toward women because it contains no exception for cases of rape or incest.

## ***Heartbeat Bills***

In March 2011, an even more restrictive anti-abortion bill was unveiled by Ohio Republican state legislators that sets the stage for a Supreme Court fight that could jeopardize the decades-old precedent set by the nation's highest court.

The bill, HB 125, which is known as the "Heartbeat Bill," states that no abortion can be committed in the state of Ohio if a baby has a "detectable heartbeat," except "to prevent the death of a pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman."

The heart is one of the first organs to develop, and a baby's heartbeat can be detected as early as 18 days for some women, and by six weeks for most.

The bill, passed by the Ohio House of Representatives 54-44 in June 2011 and is now before the state Senate, would make Ohio the first state to consider the so-called "heartbeat bill."

"We don't bury people with beating hearts, because the heartbeat is a sign of life," said Janet Folger Porter, president of Faith2Action, who helped craft the bill's language. "We are just applying that same measurement to this end of life and I believe the court is going to recognize -- just like it does with life at the other end of the spectrum -- it's going to recognize this line of life early on."

Similar bills are also being considered by legislators in Texas, Georgia and Oklahoma, and being discussed in Kansas and Arizona. And Michele Bachmann, former US Congresswoman from Minnesota, introduced a similar federal bill, The Heartbeat Informed Consent Act, in Congress.

Legal scholars have already begun taking aim at the heartbeat bill, though.

The bill would never withstand a legal challenge under the *Roe v. Wade* decision, critics say, because a fetus' heartbeat might occur before a woman even realizes she is pregnant.

"There are clearly fetuses that are not yet viable but have heartbeats," said Laurence H. Tribe, a constitutional scholar and professor at Harvard Law School. "What they're doing is trying to push the point at which the woman's rights are subordinated to those of the unborn to a much earlier point in pregnancy. ... It's clearly a frontal challenge to *Roe v. Wade*."

But the state legislature in Arkansas in 2013 achieved what no other state had been able to up to this point. In March 2013, a vote by the Republican-dominated Arkansas legislature gave the state the most restrictive abortion laws in the US.

Lawmakers overrode Governor Mike Beebe's veto of the Human Heartbeat Protection Act. The bill bans terminations after 12 weeks, when a fetal heartbeat can typically be detected by abdominal ultrasound. A fetal heartbeat can generally be detected earlier in a pregnancy using a vaginal ultrasound, but Arkansas lawmakers balked at requiring women seeking abortions to have the more invasive imaging technique.

The bill allows for exceptions to save the life of the mother and in pregnancies resulting from rape or incest.

The bill's sponsor, Jason Rapert, a Republican senator who originally proposed setting the ban at six weeks, has said that he believes his amended bill will stand up to a court challenge and could "change abortion policy in our nation from coast to coast". Most believe it is purposefully provocative with the goal of getting a court case up to the Supreme Court in an effort to challenge *Roe v. Wade*.

Adoption of the law is the first statewide victory for a restless emerging faction within the anti-abortion movement that has lost patience with the incremental whittling away at abortion rights — a strategy used by groups like National Right to Life and the Catholic Church while they wait for a more sympathetic Supreme Court.

As restrictive as the bill sounds, it would only affect a small percentage of all abortions in Arkansas. "Although I would agree that all life is precious, the suggestion that this will end abortions in Arkansas, even if it is upheld, is a mistake. It would have a very low impact on abortions in Arkansas," Paul Linton, a lawyer in Illinois who was formerly general counsel to Americans United for Life, said.

According to the Centers for Disease Control and Prevention, 91.7% of abortions happen early in the pregnancy – before 13 weeks gestation.

North Dakota quickly followed Arkansas with a similar law.

In March 2013 in North Dakota, Gov. Dalrymple signed into law a so-called “heartbeat bill,” banning performing an abortion after a fetal heartbeat can be detected, which could be as early as six weeks into a pregnancy.

The North Dakota law does not specify how a fetal heartbeat would be detected, though, which can be done using various methods that detect a heartbeat at different gestational ages. Fetal heartbeats are generally detectable six weeks into pregnancy using a transvaginal ultrasound, and at 10 to 12 weeks with abdominal ultrasounds.

Dalrymple acknowledged that a goal in signing the fetal heartbeat law was to push the issue to the U.S. Supreme Court. "Although the likelihood of this measure surviving a court challenge remains in question, this bill is nevertheless a legitimate attempt by a state legislature to discover the boundaries of *Roe v. Wade*," the governor said in statement.

### ***Personhood Bills***

In a separate legislative action, North Dakota passed an even more restrictive measure in their state Congress in March 2013. North Dakota lawmakers moved to outlaw abortion in the state by passing a resolution defining life as starting at conception.

It was a resolution to amend the State Constitution to assert that life begins at conception, and went on the ballot in a statewide referendum in the November 2014 election. It was defeated in the election, as have similar measures in Mississippi and Colorado. But these

bills and amendments continue to get onto state ballots throughout the country, showing they have a certain amount of support.

The so-called personhood measure bestows human rights on fertilized human eggs, asserting that “the inalienable right to life of every human being at any stage of development must be recognized and defended.

Kansas didn’t wait for a statewide referendum on the issue. In April 2013, Kansas enacted one of the most restrictive abortion laws in the nation, defining life as beginning "at fertilization" and imposing a host of new regulations.

Because the amendment defines a fertilized egg as a person with full legal rights, there are concerns that it will have an impact on a woman's ability to get the morning-after pill or birth control pills that destroy fertilized eggs, and it could make in vitro fertilization treatments more difficult because it could become illegal to dispose of unused fertilized eggs.

With this new legislation, Kansas becomes the eighth state declaring that life begins at fertilization, said Elizabeth Nash, state issues manager of the pro-choice Guttmacher Institute. States that already have such language are Missouri, Kentucky, Arkansas, Illinois, Louisiana, North Dakota and Ohio, Nash said.

Starting in 2011, there has been a move towards a federal personhood bill. Rep. Paul Ryan (R-Wis.), who was on the presidential ticket as vice-president in 2012 with Mitt Romney, co-sponsored the Sanctity of Human Life Act, a bill that gives full legal rights to human zygotes from the moment of fertilization.

The bill specifies that a "one-celled human embryo," even before it implants in the uterus to create a pregnancy, should be granted "all the legal and constitutional attributes and privileges of personhood."

Similar “personhood” bills have been rejected by voters in multiple states, including in Mississippi, Colorado, and Oklahoma, because legal experts have pointed out that it could outlaw some forms of birth control and in vitro fertilization as well as criminalize abortion at all stages.

### ***Clinic Requirements***

Kansas in June 2011 passed a law that restricted abortion clinics to the point that it left just one clinic in the state able to stay open.

The new law required hospitals, clinics and doctor's offices to obtain an annual license from the Kansas Department of Health and Environment to perform more than five non-emergency abortions in a month. The regulations tell abortion providers what drugs and equipment they must stock and, among other things, establish minimum sizes and acceptable temperatures for procedure and recovery rooms. It even goes so far as to dictate square footage for janitors' closets, staff dressing rooms and patient lockers.

The entire state of Kansas now has just one abortion clinic that has been able to stay open as the Planned Parenthood of Kansas and Mid-Missouri was the only clinic that met the requirements and received a license from the Kansas Dept. of Health. Kansas' only other two providers are out of business due to the tough, new licensing requirements.

"This is radical, extreme government intrusion into private health care," Peter Brownlie, president of Planned Parenthood of Kansas and Mid-Missouri. "We have been targeted in this bill and Kansas women are the ones who will suffer... This wasn't chipping away at the edges — this was a full, frontal assault."

The two providers who were forced to shut down went to federal court sought an injunction against the "burdensome and costly requirements that are not medically necessary or appropriate." A federal judge in early July 2011 temporarily blocked the new Kansas law from being enforced while a lawsuit with the law is settled.

### ***Insurance***

Another target of pro-life activists in statehouses across the country has been in insurance.

In December 2013, Michigan's overwhelmingly Republican-dominated Legislature voted to pass one of the most punishing pieces of anti-abortion legislation anywhere in the country: the Abortion Insurance Opt-Out Act, which would ban abortion coverage, even in cases of rape or incest, from virtually every health-insurance policy issued in the state. Women and their employers wanting this coverage will instead have to purchase a separate rider – often described as "rape insurance."

And it's not just Michigan. Eight other states now have laws preventing abortion coverage under comprehensive private insurance plans – only one of them, Utah, makes an exception for rape.

### **Supreme Court limits restrictions on clinics**

In what many consider to be the most significant abortion ruling in a generation, the Supreme Court ruled in June 2016 overturned a Texas law that had put what it considered was an undue burden on women's access to abortion.

In 2013, Texas passed a law requiring all abortion providers to have admitting privileges at local hospitals and all clinics to be equipped with hospital-level surgical centers. The Texas law, known as HB2, was part of a larger strategy employed by anti-abortion state lawmakers to significantly curtail abortion without actually outlawing it. Supporters of the laws argue that the regulations make abortion safer, and protect women's health. If it had been allowed to go fully into effect, Texas would have been left with fewer than a dozen clinics to serve more than 5.4 million women of reproductive age.

In *Whole Woman's Health vs. Hellerstedt*, the Supreme Court ruled 5-3 that Texas's regulations on abortion providers constituted an undue burden on the constitutionally protected right to terminate a pregnancy.

"There was no significant health-related problem that the new law helped to cure," Justice Stephen Breyer, who wrote the majority opinion, said. "The surgical-center requirement, like the admitting-privileges requirement, provides few, if any, health benefits for women, poses a substantial obstacle to women seeking abortions, and constitutes an "undue burden" on their constitutional right to do so."

"Abortions taking place in an abortion facility are safe — indeed, safer than numerous procedures that take place outside hospitals and to which Texas does not apply its surgical-center requirements," he wrote, reviewing the evidence. "Nationwide, childbirth is 14 times more likely than abortion to result in death, but Texas law allows a midwife to oversee childbirth in the patient's own home."

The ruling was a clarification on the 1992 plurality opinion in *Planned Parenthood v. Casey*, in which the Court stated that states may regulate abortion as long as they do not create an "undue burden." The Court's ruling in *Hellerstedt* attempts to clarify exactly what an "undue burden" means.

Major medical organizations like the American Medical Association and the American College of Obstetricians and Gynecologists had filed amicus briefs urging the Supreme Court to strike down the law, calling the restrictions "medically unnecessary."

"The court reaffirmed that the court respects women's health and dignity in making health decisions, and they shouldn't have to face needless barriers," said Stephanie Totti, the lawyer with the Center for Reproductive Rights who argued the case on behalf of Whole Woman's Health. "This makes it clear that states cannot enact sham laws that limit women's access to abortion."

The Court's ruling in *Hellerstedt* could also signal that similar laws that have been passed in other states will also be ruled unconstitutional and overturned. According to the Guttmacher Institute, 14 states, including Texas, require physicians that perform abortions to have admitting privileges or some other relationship with a nearby hospital, while 22 states have facility requirements that are very similar or exactly the same as requirements for ambulatory surgical centers.

## **Buffer Zones Declared Unconstitutional**

In June 2014, the Supreme Court ruled that putting up “buffer zones” around abortion clinics is a violation of the First Amendment.

The decision found that a 2007 Massachusetts law that imposed a 35-foot buffer zone around abortion clinics puts an unconstitutional limitation on protesters’ freedom of speech.

The court objected to the notion of buffer zones in part because such broad perimeters “burden more speech than necessary” by excluding “petitioners” (“not just protesters”) from public sidewalks, streets, and other public thoroughfares, “places that have traditionally been open for speech activities and that the Court has accordingly labeled ‘traditional public fora.’”

Buffers zones deprive petitioners “of their two primary methods of communicating with arriving patients: close, personal conversations and distribution of literature. Those forms of expression have historically been closely associated with the transmission of ideas,” the court wrote.

But the decision hardly creates a “free-for-all” for protesters outside abortion clinics or anywhere else. The court left open the possibility that states can pass specific, “narrower” laws designed to protect people entering and leaving abortion clinics, or to ensure the safety of the crowd or others.

“[E]ven in a public forum. . . the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions ‘are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information,’” the court held.



In the November 2012 elections, pro-choice activists had cause to celebrate, though, as two U.S. Senate candidates were defeated at the polls: Todd Aikin of Missouri, who said that a woman's body can resist a pregnancy in the case of "legitimate rape," and Richard Mourdock of Indiana, who said pregnancies conceived in rape are "intended" by God. The positions these U.S. Senate candidates were taking is a pro-life one that is arguing to get rid of the rape and incest exception that exist amongst most pro-life advocates.

## **CCPA**

Currently, some members of Congress are seeking to make it even more difficult for minors living in states with mandatory parental involvement laws to obtain an abortion with the so-called "Child Custody Protection Act" (CCPA). The bill would make it a federal crime to transport a minor across state lines for an abortion unless the parental involvement requirements of her home state had been met. If the bill were enacted, persons convicted would be subject to imprisonment, fines, and civil suits.

In April 2003, the CCPA was reintroduced in the House of Representatives and the Senate. The bill would make it a federal crime to transport a minor across state lines to obtain abortion services without fulfilling the parental consent or notice requirements of her home state. In 1998, the House of Representatives passed the bill by a vote of 276 to 150, but President Clinton threatened to veto it, and the Senate never took it up for consideration.

In 1999, the House Judiciary Committee passed the CCPA, defeating five proposed amendments, including those that would create exceptions for grandparents, siblings, aunts and uncles, and clergy who assist minors in obtaining abortions. That year, the legislation passed in the full House of Representatives again, this time by a vote of 270 to 159. However, the Senate again failed to take it up for consideration. Although, if passed, the Act would only affect a small percentage of women seeking abortion services — minors account for fewer than one in 10 abortions performed — the impact of the Act would be dramatic.

- The CCPA would subject to criminal penalties anyone — a grandparent, adult sibling, member of the clergy, or medical professional — who assists a minor in traveling across state lines to receive an abortion without the parental consent or notification required by her home state.

- CCPA makes such assistance a crime even if confidential abortions are legal in the state where the abortion is to be performed and even if that state allows the accompanying grandparent or adult sibling to give lawful consent for the minor's abortion.
- The CCPA makes criminals out of family members and friends even in emergency situations when the minor needs an immediate abortion to protect her health.
- The CCPA potentially requires a minor to satisfy differing legal requirements in two states: the state she comes from and the state where she is to have the abortion. If those two states both have parental consent or notice requirements, the minor may have to seek waivers from judges in two states, further delaying her abortion and raising its costs and health risks.
- Because 87% of U.S. counties lack an abortion provider, CCPA will increase the burdens on the many young women who must cross state lines simply to access the nearest abortion provider.

**1976:** In *Planned Parenthood of Central Missouri v. Danforth*, the Supreme Court strikes down requirements for parents and spouses to consent to abortions.

Congress enacts the Hyde Amendment for the first time, banning the use of federal funds for abortion except in cases of rape, incest or endangerment of the mother's life. This amendment has been attached to the congressional appropriations bill and approved by Congress every year since then.

**1980:** In *Harris v. McRae*, the Supreme Court upholds the Hyde amendment, which restricts Medicaid funding of abortions to those procedures needed to protect the life of the pregnant woman and to those required in other special circumstances.

**1983:** In *Akron v. Akron Center for Reproductive Health*, the Supreme Court declares unconstitutional a city ordinance requiring all abortions after the first trimester be performed at a hospital, a 24-hour waiting period and parental consent for girls younger than 15.

**1989:** In *Webster v. Reproductive Health Services*, the Supreme Court upholds a Missouri law banning the use of public employees or facilities for abortion and requiring physicians to perform tests to determine viability on fetuses of more than 20 weeks' gestation.

**1992:** In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the Supreme Court upholds the core of its *Roe v. Wade* ruling and ban states from outlawing most abortions. But it abandons the trimester plan and instead adopts a new test -- abortion regulations that present an "undue burden" on women's constitutional right will be prohibited.

**1994:** President Bill Clinton signs the Abortion-Clinic Protection Bill into law, which is designed to protect abortion clinics from attacks, blockades and acts of intimidation by pro-life protesters.

**2000:** The Food and Drug Administration approves the abortion pill RU-486. The drug enables a woman to terminate a pregnancy within seven weeks from her last menstrual period, without the need for a surgical abortion.

**2003:** President George W. Bush signs the "partial-birth abortion" bill, outlawing the procedure known as intact dilation and extraction (D&X). Federal judges quickly issue injunctions that temporarily nullify the law's effect for many abortion providers.

**2007:** The Supreme Court upholds the partial-birth abortion law 5-4 (*Gonzales v. Carhart*) in the first federal restriction on a particular abortion method since *Roe v. Wade*.