

Messenger

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MISSOURI
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CONFERENCE



In pursuit of life



Pro-life advocacy in Missouri & the nation in 2019

Prompted by recent appointments to the United States Supreme Court, state legislatures across the country passed new pro-life laws in 2019. These laws were meant to restrict abortion and, in some instances, potentially be a vehicle for the Supreme Court to reconsider its prior abortion decisions. Many states passed “heartbeat bills” which prohibit abortions when a fetal heartbeat is detected, as early as the sixth week of pregnancy. Missouri made headlines this year when it passed the “Missouri Stands for the Unborn Act”, a comprehensive pro-life bill that contained a heartbeat bill along with numerous other pro-life provisions. However, other states, such as New York and Illinois, ventured in the opposite direction, passing legislation meant to protect and expand abortion rights in the event that the Supreme Court overrules or weakens its decision in *Roe v. Wade*.

In this issue of Messenger, we will provide an overview of state abortion laws passed this year and provide the current landscape of abortion laws in our country. In particular, we will focus on those laws that would attempt to ban all abortions after a certain point in the pregnancy, as many states are adopting this legislative approach. However, to understand the current state of pro-life laws, it’s important to understand the Supreme Court decisions that currently guide (and restrict) our abortion laws.

Background

In 1973, the U.S. Supreme Court recognized a constitutional right to abortion that has impacted every state abortion law since. In *Roe v. Wade*, the Supreme Court found that a woman has a fundamental right of privacy to obtain an abortion. However, that right must also be weighed by the State’s interest in protecting the mother and in protecting the “potential” life of the unborn child. Because of a woman’s right to privacy in this matter, the Supreme Court ruled that a state cannot prohibit abortion before “viability” — the time that the unborn child could survive outside of the womb. In most cases, viability will occur around 22 weeks post-fertilization, although medical advances

continue to push the point of viability to an earlier gestational age.

The Roe court also used a trimester framework to set limits on the State's ability to regulate abortion. The Court held that in the first trimester, the State may not restrict access to abortion for any reason, including to protect the life of the unborn child. In the second trimester, the State may regulate abortion only for the purpose of protecting the life of the mother. After viability, the Court held that the State may regulate and even prohibit abortion, unless an abortion is necessary to protect the life and health of the mother. *Doe v. Bolton* (1973), decided on the same day as *Roe*, clarified that the health of the mother was to be broadly interpreted to include any aspect of the mother's well-being, including physical, emotional, psychological, and mental health. When taken together, these cases held that states may prohibit abortions after viability as long as there are exceptions for the life and health of the mother, with health being broadly defined to include both physical and mental health.

In *Planned Parenthood v. Casey* (1992), the Court recognized that the State had a substantial interest in the potential human life, but ultimately upheld *Roe*. The Court eliminated the trimester framework of *Roe* and provided a new test -- an abortion law is unconstitutional if its purpose is to place an "undue burden" (defined as a "substantial obstacle") upon a woman seeking an abortion prior to fetal viability. So while states have some ability to regulate abortion prior to viability, these rulings still prohibit any outright ban on abortions before a child is viable.

In 2019, 12 states enacted an abortion ban, while six states protected or expanded abortion access. (More info on pg. 4)

Gestational Age Bans

Many of the pro-life bills passed in 2019 sought to ban abortion at a specific point in pregnancy. Nine states enacted such bans, with the majority of those banning abortions conducted before a fetus is viable. During its most recent legislative session, Alabama passed a total ban on abortions with some limited exceptions. Lawmakers in the state have expressed their hope that the new law would lead to a challenge of *Roe v. Wade*.

While Alabama sought to ban all abortions, the majority of bans passed in 2019 came as a result of "heartbeat bills". These bills would ban abortions when a fetal heartbeat has been detected. Georgia, Kentucky, Louisiana, Mississippi, and Ohio each banned abortion at six weeks of pregnancy, the earliest point a fetal heartbeat can be detected. Missouri passed a ban at eight weeks, but also included bans at other stages of pregnancy in case the eight week ban was ruled unconstitutional. The Missouri bill, HB 126, was also unique in that it included roughly 50 findings of fact detailing various markers at each state of human development, including the existence of a heartbeat and brain waves early in development and the capacity of the unborn child to feel pain.

Arkansas and Utah each passed laws prohibiting abortions after 18 weeks, or roughly midway through the second trimester. In addition, Missouri passed the "Late-Term Pain Capable Unborn Child Protection Act" as part of HB 126. This provision would ban abortions at 20 weeks, the time at which the unborn child can feel pain. **The graphic on pg. 3 shows where the U.S. stands as of Nov. 1, 2019 on gestational abortion bans.**

"Dismemberment Abortion" Bans

Indiana and North Dakota each passed a law prohibiting dilation and evacuation (D&E) abortions. Also known as "dismemberment abortions", D&E abortions involve the use of surgical instruments to dismember and then extract the fetus from the mother. While not a specific age ban, D&E abortions are the typical method used for surgical abortions starting around the 14th week of pregnancy.



"Trigger Bans"

Many states also passed "trigger bans" in 2019. Missouri, along with Arkansas, Kentucky, and Tennessee passed legislation this year that would protect unborn children from the moment of conception except in the case of medical emergency. These provisions would go into effect -- or be "triggered" -- when *Roe v. Wade* is overruled or the states are otherwise authorized to fully regulate abortion. These four states joined Louisiana, Mississippi, North Dakota, and South Dakota, which already have laws in place to ban most abortions in the event *Roe* is overturned.



The legal status of pro-life laws at the close of 2019

20 - 22 weeks

North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Arkansas, Louisiana, Iowa, Wisconsin, Mississippi, Alabama, Georgia, South Carolina, Kentucky, Indiana, Ohio, West Virginia

24 weeks

Nevada, Pennsylvania, New York, Massachusetts, Florida

3rd trimester

West Virginia

Viability

Washington, California, Arizona, Utah, Idaho, Montana, Wyoming, Minnesota, Missouri, Illinois, Tennessee, Michigan, North Carolina, Maryland, Delaware, Rhode Island, Connecticut, Hawaii, Maine

No restrictions

Alaska, New Mexico, Oregon, Colorado, New Jersey, Vermont, New Hampshire

Data sourced from the Guttmacher Institute

Though many states made great strides in passing pro-life laws this year, many have been blocked from going into effect. As discussed earlier, lower courts have consistently found themselves bound by Roe, Doe, and Casey when reviewing bans on abortion prior to viability. Even those district and appellate courts that have seemingly been sympathetic to reconsidering Roe have pointed out that lower courts are bound to follow the Supreme Court (As the Eleventh Circuit Court of Appeals stated in *West Alabama Women's Center v. Williamson* (2018), "there is only one Supreme Court, and we are not it").

In line with the cases discussed above, all nine gestational age bans passed in 2019 have been temporarily blocked by the courts. In Missouri, Planned Parenthood of St. Louis filed suit to halt the eight, 14, 18, and 20 week bans, as well as a separate ban on abortions based solely on the race or sex of the unborn child or a pre-natal diagnosis of Down

Syndrome. Planned Parenthood's request was granted, and these provisions have been blocked from going into effect. In addition, Indiana's dismemberment abortion ban has also been temporarily blocked. North Dakota's dismemberment ban was passed with a "trigger" provision, so it is technically not in effect and has not been challenged, because it will not go into effect until Roe is struck down.

The graphic above shows the current abortion bans in effect in each state, regardless of more restrictive bans that might have been passed. With its recently-passed gestational age bans blocked, Missouri joins 23 other states in banning abortion at viability. One state, Virginia, currently has a ban starting in the third trimester. Seventeen states have been successful in passing a ban at 22 weeks, and one state has a ban at 20 weeks.

The future status of these bans is unclear. Missouri, through Attorney General Eric Schmitt, has appealed the preliminary

2019 abortion laws continued

injunction against the gestational age and discrimination bans passed as part of HB 126 in 2019. It is likely that many of the other states that passed pre-viability bans will also appeal. Pro-life supporters hope one of these bans will make it to the Supreme Court and become the vehicle that ultimately leads to the end of Roe. However, there is no guarantee that even with its current makeup, the Court will use one of these cases to revisit its past abortion decisions. The Supreme Court has recently agreed to take a case dealing with a Louisiana law requiring any doctor performing an abortion to have admitting privileges at a nearby hospital. While this case does not address gestational age bans, it could still be a vehicle for the Court to reconsider Roe.

Regardless of what happens in the next couple of years, pro-life advocates should be encouraged by this legislation. As Archbishop Joseph Naumann, Chairman of the United States Conference of Catholic Bishops' Committee on Pro-Life Activities, recently stated, "The trend of states passing pro-life legislation is a very encouraging move toward ensuring that our society cherishes unborn children and their most basic right to life." Archbishop Naumann also reminds us that ensuring unborn children are recognized and protected by the law is not the only objective of the pro-life movement. The other is to make sure that abortion becomes unthinkable. "As we celebrate these pro-life legislative victories, we reiterate our commitment to supporting all mothers with the care and resources they need. The Church stands ready to help and welcome them."

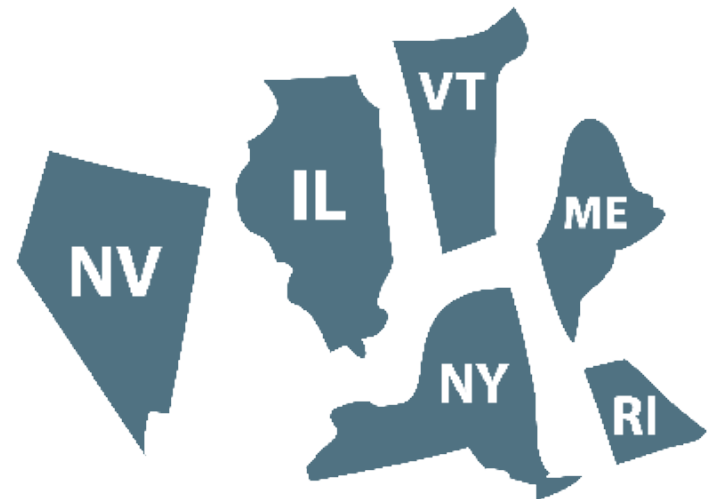
The MCC will continue to work with Missouri lawmakers to protect and defend unborn life. You can join us in our efforts by signing up to be a member of MOCAN by calling us at 1-800-456-1679 or by visiting our website, mocatholic.org.

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States that Expanded Abortion Protections

While states such as Missouri were passing stronger pro-life protections, other states sought to protect and expand abortion rights out of fear that the Supreme Court could weaken Roe in the next few years. The most publicized of these was the Reproductive Health Act (RHA), passed in New York, which sought to incorporate the Roe v. Wade abortion protections into state law. The RHA affirmed the right to an abortion up to the point of viability and, in line with Roe and Bolton, after viability when a woman's life or health is at risk, including her mental and emotional health.

Closer to home, Illinois also passed a sweeping law meant to protect abortion rights. The Illinois Reproductive Health Act removed previous abortion restrictions, including a repeal of the state's Partial-birth Abortion Ban, and established that "a fertilized egg, embryo, or fetus does not have independent rights under the law of this State." Nevada, Vermont and Rhode Island also passed abortion expansion bills in 2019.



Join the Missouri Catholic Advocacy Network! (MOCAN)

Join the 10,000 + Catholic Missourians who make up the team of advocates who help the Catholic voice ring through the halls of the Missouri State Capitol. If you want to stay updated on pro-life legislation — or any of the many other legislative priorities the MCC advocates for — you will not want to miss the opportunity to join MOCAN.

If you're already a member, encourage your family, friends, and fellow parishioners to join! As MOCAN grows, so does the Catholic voice in Missouri's Capitol. Visit mocatholic.org or send us an email at mocatholic@mocatholic.org for details.