

Abortion Legislation

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According to the Guttmacher Institute, a research organization that supports abortion rights, we can blame the recent legislative ruckus over abortion on Justice Brett Kavanaugh, appointed to the Supreme Court last year. One of the Institute's policy analysts, Elizabeth Nash, told the *New York Times*:

The appointment of Kavanaugh focused legislators across the country on abortion. It focused conservative legislators to pass abortion restrictions that they hope will be challenged and end up before the court, so the court can undermine or overturn abortion rights. It also focused progressive legislators like those in New York to pass laws that protect abortion rights in their own states.

Most states follow the standard set by the Supreme Court's 1973 *Roe v. Wade* decision, which says abortion is legal in the U.S. until the fetus reaches viability, usually at 24 to 28 weeks. But this year, nine states have already passed legislation restricting abortion either altogether or to earlier in the pregnancy. In early May, Alabama legislators voted to ban abortions in nearly all cases (which is the toughest law in the land right now), but the other eight states—Georgia, Kentucky, Louisiana, Mississippi, Ohio, Missouri, Arkansas, and Utah—have all merely narrowed the window for legal abortions from the 24-28 weeks to much earlier in the pregnancy.

Georgia, Kentucky, Louisiana, Mississippi, and Ohio passed what are being called "heartbeat bills" that effectively prohibit abortions after six to eight weeks of pregnancy. It is at that time that doctors can usually detect a fetal heartbeat. Missouri's bill, signed by the governor, bans abortion after eight weeks. It puts a definite time limit on it, rather than just hearing the heartbeat. Utah and Arkansas voted to limit the procedure to the middle of the second trimester (about 18 weeks). Oklahoma and Texas have pending abortion-*ban* bills that are going through their legislatures, and Texas and South Carolina have heartbeat bills in the works. I think the one in South Carolina passed their House, and I believe it is going on to the Senate.

These latest attempts to roll *Roe v. Wade* back are not yet in effect. Kentucky's bill was blocked by a liberal judge, and all are expected to face lengthy court battles. But that's the point (as Elizabeth Nash says): The hope is that at least one of these bills will be challenged judicially and make its way up the courts until it reaches the Supreme Court,

where (we hope) a conservative court will strike much, if not all, of *Roe v. Wade*. However, it faces a tough uphill climb. Earlier abortion-restricting bills in North Dakota (2013) and Iowa (2018) have been struck down by the courts. So, the wording has to be different on these new bills coming from some of these other states so they do not face the same fate as these bills from North Dakota and Iowa.

But there is always another side to this. There are progressive states that are passing bills on the other side of the issue. On January 22, New York Governor Andrew Cuomo signed an atrocious law into effect that codifies *Roe v. Wade* into state law, which means that should the federal law—*Roe v. Wade*—be struck down, people would still be able to get abortions in New York State. That bill makes legal late-term abortions if a mother's life is threatened or the fetus is not viable. The law also allows healthcare professionals such as nurse practitioners or physician assistants to perform abortions, meaning no doctor is necessary in New York. It can be done by someone with lesser training and experience. Massachusetts passed a similar bill in February.

On May 13, Vermont passed perhaps the most expansive abortion law in the nation, making abortion a “fundamental right,” allowing the procedure until birth, and forbidding state agencies from interfering with access to “reproductive health services.” This sounds bad, but you probably don't realize that that was basically what Vermont always had going there. It just codifies the status quo there, as Vermont has had no legal restrictions to abortion at all.

Illinois passed a sweeping abortion rights bill last Tuesday, May 28. Like the New York and Vermont bills, its bill establishes the “fundamental right” of a woman to have an abortion and specifically states that a “fertilized egg, embryo or fetus does not have independent rights.” It repeals the Illinois Abortion Law of 1975, doing away with provisions for spousal consent, waiting periods, criminal penalties for physicians who perform abortions, and restrictions on abortion facilities.

Similar bills—this is kind of good news—in New Mexico and Rhode Island (progressive states) were defeated earlier this year, and infanticide bills in Montana and North Carolina were passed. What makes this interesting is the ones who defeated abortion-rights bills in New Mexico and Rhode Island, and the ones who passed the anti-infanticide bills in Montana and North Carolina, were pro-life Democrats. When they were asked why they went against their party, they said their party was going too far to enshrine *Roe v. Wade* into law.

Something is in the wind across the United States, and for the most part, it is a fairly pleasant breeze. It is good to see these red states challenge *Roe v. Wade* by passing

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these bills, but it all may turn out to be just sound and fury in the end. Conservatives have an edge on the Supreme Court, but we have to ask: Are all the conservative justices courageous enough to overturn *Roe v. Wade*? Do they have the political will? Do they have the stomach to rid America of this national shame? I am usually optimistic about these things. I hope they do. But I tend to think that most, if not all, of these measures will fail in the end.

I hope I'm wrong.