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Reproductive Rights: A Look at the Recent Legislation Passed Across the Country Aimed at Either Limiting or Protecting the Right to Abortion Procedures

Colleen Ahern

Last year, the nation saw a wave of anti-abortion bills sweep several states at an attempt to hinder woman from obtaining a legal abortion. The stab at reproductive rights that occurred in a domino effect across multiple states starting in spring of 2019, which have caused a public outcry and prompted many other states to protect that same right. Georgia, Kentucky, Louisiana, Missouri, Mississippi, Ohio, South Carolina, Tennessee, Alabama, Arkansas, and Oklahoma have passed or contemplated the idea of passing “heartbeat” bills.¹ These heartbeat bills (which state that once a doctor can detect a heartbeat in the womb, they can no longer terminate a pregnancy) banned most abortions.² A heartbeat typically occurs around six weeks of pregnancy, often before many women realize they are even pregnant.³ The uptick in abortion legislation did not just inspire anti-abortion bills, but legislature in many states solidified a woman’s right by ensuring protection of abortion procedures remain in place.⁴ New York, Vermont, and Illinois are just a few that passed bills maintaining the fundamental right to an abortion.⁵ In a response to the legislation, several Appeals Court and Supreme Court cases remained in limbo as the states and courts tried to hash out the issue.⁶ It was unclear whether or not the monumental *Roe v. Wade* would be overturned.⁷

The spring of 2019 seemed to spark a fast and almost unexpected phenomenon sweeping the nation.⁸ State legislatures in nearly twelve states passed bills that posed new restrictions banning abortions where a heartbeat was de-

¹ Isaac Sabetai, *A Look at Abortion Bills around the U.S. in 2019*, ATLANTA J-CONST. (Sept. 19th, 2019), <https://www.ajc.com/news/state—regional-govt—politics/look-abortion-bills-around-the-2019>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ NAT’L ORG. FOR WOMEN, *Keeping Track of Possible Supreme Court Abortion Cases* [Hereinafter *Keeping Track*], <https://now.org/keeping-track-of-possible-supreme-court-abortion-cases/>.

⁷ *Id.*

⁸ Anne Ryman, *For Anti-Abortion Activists, Success of ‘Heartbeat’ Bills was 10 Years in the Making*, CENTER FOR PUB. INTEGRITY, <https://publicintegrity.org/politics/state-politics/copy-paste-legislate/for-anti-abortion-activists-success-of-heartbeat-bills-was-10-years-in-the-making/>.

tected.⁹ The heartbeat bill that raced through national headlines and caught the attention of Americans for weeks was not as sudden as it appeared.¹⁰ In reality, the bill stemmed from an effort originating in Ohio almost ten years ago, and has since regained traction while been recycled over and over again.¹¹ Arkansas and North Dakota first passed heartbeat bills in 2013, which were immediately blocked by court challenges and declared unconstitutional.¹²

What's different now? The momentum increased when recent shifts occurred on the Supreme Court.¹³ Missouri, Kentucky, Mississippi, Ohio, Georgia, and Louisiana passed heartbeat bills where many were quickly blocked by federal judges.¹⁴ Alabama went so far as to criminalize abortion procedures, declaring it a felony punishable with up to life in prison.¹⁵ Governor Hutchinson of Arkansas signed two anti-abortion bills, one that would outlaw abortion if *Roe v. Wade* were reversed, and another that bans an abortion after 18 weeks.¹⁶

The bills, which made way through state legislatures for years before they caught the astonishing attention of the American people last year, stemmed from a Washington D.C. based public interest law firm, Americans United for Life.¹⁷ The firm is a full-service operation churning out written legislation that lawmakers adopt into law, making attorneys available for consultation, furnishing witnesses like doctors and professors to testify on behalf of the bills.¹⁸ One of Americans United for Life's most well-known cases was its involvement in the 1980 U.S. Supreme Court decision that upheld prohibition of federal funding of abortions in most cases.¹⁹ Each year, about 30 bills pass nationwide based on the models or assistance from the firm's attorneys.²⁰ What initially appeared as an unpredicted tidal wave of an attack on abortion rights was actually a tsunami waiting to happen.

One effect of lawmakers enacting anti-abortion bills nationwide is an increase in appeals, as well as Supreme Court cases with the hopes of perma-

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Sabetai, *supra* note 1, at 3.

¹⁶ *Id.*

¹⁷ Ryman, *supra* note 8.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

nently squashing the issue. The National Organization for Woman has kept a log of the pending court decisions that may have an effect on many of those states' staunch bills.²¹ A case arising out of Kentucky, *EMW v. Glisson*, concerns state law that would have effectively banned abortions by shutting down the one remaining health center that offered the procedure safely and legally.²² The site is also tracking *June Medical Services v. Gee*, a case concerning a Louisiana statute that requires doctors who administer abortions to have "active admitting privileges" at a nearby hospital.²³ Active admitting privileges allow medical providers to admit patients to a particular hospital and provide medical services at that hospital.²⁴ In relation to abortions, active admitting privileges means hospitals have the power to decide whether an abortion provider can continue to offer care in that given area, in essence, a means to reduce access.²⁵ The lawmakers behind the bill hope the outcome of the Supreme Court case will overturn *Roe v. Wade*.²⁶ The Supreme Court recently heard oral arguments for the case on March 4th of this year, making it the first abortion rights case heard since the confirmations of Justices Neil Gorsuch and Brett Kavanaugh.²⁷

The Guttmacher Institute, a well-known research organization that studies reproductive health rights, compiled a detailed chart outlining each state and the several different provisions they may or may not have to follow when performing an abortion.²⁸ The informative breakdown allows one to visualize every little nuance and caveat there may be.²⁹ This includes whether the procedure must take place in a hospital, whether a second physician must participate depending on how far along the pregnancy is, whether the parental involvement is required for minors, and whether a waiting period applies after required counseling.³⁰ The ability of each state to conform and shape their individual abortion laws creates a variety of different rules a woman must follow before she decides to begin the abortion procedure. Take for example Louisiana, the state where *June Medical Services v. Gee* derives from. According to

²¹ *Keeping Track*, *supra* note 6.

²² *Id.*

²³ *Id.*

²⁴ GUTTMACHER INST., *Data Center* (last updated Dec. 3rd, 2019), <https://data.guttmacher.org/states>.

²⁵ *Id.*

²⁶ *Keeping Track*, *supra* note 6.

²⁷ *Id.*

²⁸ GUTTMACHER INST., *supra* note 24.

²⁹ *Id.*

³⁰ *Id.*

the charts, Louisiana requires: the abortion must be performed by a licensed physician, a second physician must participate at viability, the abortion will be prohibited at 20 weeks unless in cases of life or health endangerment, mandated counseling on fetal pain and negative psychological effects, a twenty-four hour waiting period after said counseling, as well as parental consent of parents for minors.³¹ Those charts, indicating just how confusing the process is, also gives a distinct visual representation of which states adhere to confining abortion laws.³²

In a response to the undermining efforts of those half a dozen heartbeat bill states, a few states turned in a far different direction by protecting a women's fundamental right. New York signed a law that codified *Roe v. Wade* into its states provisions, allowing abortions to remain legal even if the court decision is overturned.³³ Republican Governor Phil Scott of Vermont signed a bill that declared the right to abortion without any restrictions.³⁴ Here in Illinois, the House of Representatives passed a major controversial abortion rights bill in May of 2019 that made drastic changes to its predecessor.³⁵ The bill, labeled the Reproductive Health Act, quickly moved onto Governor Pritzker's desk and he officially signed it into law just a few days later.³⁶ In response to the passage of the bill, Governor Pritzker stated, "with reproductive health care under attack across the country, we must do everything we can to protect women's rights in Illinois."³⁷

The Reproductive Health Act repealed and replaced the standing Illinois Abortion Law of 1975.³⁸ The previous statute required spousal consent, a waiting period, criminal penalties for physicians who perform abortions, a partial birth abortion ban affecting later-stage pregnancies, and other restrictions on cites performing the procedures among other things.³⁹ Contrary to the anti-abortionist legislation, Illinois' bill established the "fundamental right" of a pregnant woman to have an abortion and states that, "a fertilized egg, em-

³¹ *Id.*

³² *Id.*

³³ Sabetai, *supra* note 1, at 4.

³⁴ *Id.*

³⁵ Jamie Munks, *Illinois House Passes Sweeping Abortion Rights Bill after Emotional Floor Debate*, CHI. TRIB. (May 29, 2019), <https://www.chicagotribune.com/politics/ct-met-illinois-abortion-bill-house-20190528-story.html>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

bryo, or fetus does not have independent rights.”⁴⁰ Key advocates of the bill highlighted the importance of its passage in relation to the several pending Supreme Court cases that could potentially overturn the landmark decision of *Roe v. Wade*, which legalized abortion in all fifty states.⁴¹ One of those sponsors, Rep. Kelly Cassidy sat down with National Public Radio and reiterated her concern over the future of *Roe*.⁴² She stated how the effect Illinois’ bill was to create a firewall around the state that will protect women’s reproductive health, with the fear in mind of how certain states are looking to outlaw abortions.⁴³ Rep. Cassidy stated she felt it was important to get the Reproductive Health Act passed before the House adjourned.⁴⁴ Further, she recognized the “very strategic and determined process by the other side to get cases into the pipeline that will ultimately lead to *Roe* falling.”⁴⁵ The concern the Illinois lawmakers felt was not over the legality of an abortion, but rather the access of obtaining an abortion could be jeopardized.⁴⁶

It is evident that the recent legislation passed across the country is in no way new. The steps taken to jeopardize a woman’s right to obtain a lawful abortion in certain states have been a long time coming and have finally gained a certain traction. That traction, centered upon the shift in politics in the United States and the current roster of the nine Supreme Court Justices, creates a perfect opportunity for those pro-life advocates to finally get their chance to overturn one of the nation’s most significant Supreme Court holdings: *Roe v. Wade*, which gave women an opportunity to legally choose abortion. The future of *Roe v. Wade* and the fundamental right to an abortion remains clouded, and perhaps only time will tell how the outcome of the several ongoing court cases challenging these new restrictive bills will pan out.

⁴⁰ Munks, *supra* note 35.

⁴¹ *Id.*

⁴² LuLu Garcia-Navarro, *Illinois State Representative on Abortion Rights Bill*, NAT’L PUB. RADIO (June 2nd, 2019), <https://www.npr.org/2019/06/02/729050280/illinois-state-representative-on-abortion-rights-bill>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Munks, *supra* note 35.