

State Pro-Family Legislative Report for 2011

“Think globally, act locally,” used to be the mantra of the environmental movement back in the day. Lately it has come to more accurately describe efforts of the resurgent conservative movement in the United States. The politically savvy know the importance of state and local government. While the scope is more provincial and isolated, certainly not as exciting as politics at the national level, this does not stop state and local governments from grabbing their own headlines, if for different reasons. State and local governments may not affect the greatest number of people, but those they affect, they do so with greater flexibility to innovate and willingness to test legislative precedent.

It was Justice Brandeis who made the celebrated remark that the states are the “laboratories” of democracy. Usually for good and sometimes for ill, state and local governments have been more flexible in bending to the will of the people. By design, access barriers to politicians and political office are far lower than they are at the national level. Term limits and relatively high turnover rates keep fresh faces and innovative ideas flowing through statehouses. Constitutions are more easily amended, policies more pliable and laws more responsive to citizens’ needs. This is all the more pronounced against the backdrop of doomed efforts in Washington D.C. where chronic gridlock has some calling it the “graveyard” of democracy.

The groundwork and infrastructure needed to shape the national dialogue and bring about pro-faith and pro-family policies are coming together with measurable achievement in the states. Where there’s impasse at the national level, there’s consensus in many of the states. Following the November elections, twenty-six states saw both chambers of their legislature flip Republican,

some, like North Carolina, for the first time since the Civil War. And while elites in Washington or in the media would like you to believe this political change was based solely on “pocketbook issues,” these new state legislators and legislatures understand getting your fiscal house in order goes hand in hand with advocating for policies that strengthen the family. It’s in these state laboratories where we’re testing the benefits of informed consent and 72 hour waiting periods. It is where we’re discovering abortion giant Planned Parenthood is not the sole provider of women’s health services, and where we’re finding out that protecting marriage is really an American issue, not a partisan one.

Leading the way in many states is a network of Family Policy Councils (FPCs). These organizations accomplish at the state level what Family Research Council does at the national level—shape public debate and formulate public policy. FPCs work with state legislators, local government officials and community leaders to encourage and initiate pro-family policies. They provide policy analysis, promote a responsible and informed citizenry, provide support for decision makers, pro-actively shape public opinion by communicating pro-family ideas to the media and leading cultural initiatives to strengthen marriage and respect for life. FPCs are independent entities with no corporate or financial relationship to each other or to Family Research Council. However, they share common core beliefs in the sanctity of human life and in the institution of marriage. Beyond that, their emphasis on issues varies from state to state depending on the unique needs of the citizens living there.

Family Research Council, along with Family Policy Councils and the great body of concerned citizens, have been able to effect changes at the state and local level that are now informing and guiding our national discussion. With many statehouses adjourned or adjourning in coming weeks, we have the vantage point to start seeing what worked and what did not. We

can now study the pro-family and pro-faith bills that passed, assess their language and weigh the possible legal challenges. The following pages will outline the different types of pro-life and pro-family legislation that have gained traction this year and the states that have seen successes.

Pro-Life Bills Overview

This year, state lawmakers introduced an unprecedented number of abortion related bills, the sheer volume of which made it difficult to track, let alone count. The pro-abortion research group, Guttmacher Institute, counted 916 bills generically related to “reproductive rights.” NARAL Pro-Choice reported tracking 374 “anti-abortion” bills nationwide, up 200 from the previous year. Not to be outdone, the Family Research Council sorted through and categorized 402 bills pertaining to the life issue. As one representative of Guttmacher ironically put it, this flurry of mostly pro-life legislation has been a “total onslaught.”¹ But it has not been the bean counting and tallying from this admittedly imprecise and often duplicative numbering that’s made this year an impressive one. “What’s different this year,” reported the Associated Press, “is not the raw numbers of anti-abortion bills, but the fact that many of the toughest, most substantive measures have a good chance of passage...”²

Certainly the number of bills introduced is attention worthy, but even more telling is how many of these bills cleared substantial legislative hurdles. There are many obstacles to a bill’s passage. Those opposed to legislation only have to be successful at blocking a bill at one step in the process, whereas proponents need to win at each and every stage. Close to 40 pro-life bills

¹ Michael Martinez, “More States Restrict Abortion: Group Says Trend Unparalleled,” *CNN*, 13 April 2011, http://articles.cnn.com/2011-04-13/us/abortion.state.laws_1_abortion-providers-abortion-restrictions-abortion-coverage?_s=PM:US (accessed 6 June 2011).

² David Crary, “Wave of Anti-Abortion Bills Advance in the States,” *Associated Press*, 23 March 2011, http://news.yahoo.com/s/ap/20110323/ap_on_re_us/us_anti_abortion_surge (accessed 6 June 2011).

passed out of one or both legislative chambers, 33 bills across 9 states in April alone, a testament to the responsiveness and resolve of pro-life lawmakers. Most of the legislation being proposed and passed does not construct frivolous barriers to abortion access but, instead, seeks consent, provides information and ensures safety. These laws are designed to support, not stigmatize women, and go far to defuse the argument that being pro-life is anti-women.

State	Type of Legislation Bill Number	Progress/Latest Activity
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Sex Selection Abortions

On March 29, 2011, Jan Brewer joined Arizona with Illinois, Oklahoma and Pennsylvania in banning sex and race-selective abortion. The prohibition makes it a 3rd class felony to procure an abortion or coerce a woman to have an abortion due to reasons of the child’s sex or race, a problem census data demonstrably shows affects certain immigrant groups, particularly those coming from oriental cultures dominated by male child preference. A recent study in *Social Science and Medicine* entitled “*There is such a thing as too many daughters, but not too many sons,*” is one of numerous qualitative studies that highlight the prevalence of fetal sex selection, in this instance among Indian immigrants in the United States.³ Similar measures have been introduced in California, New Jersey and New York in years prior, but never passed. Arguments against the bill were largely centered on its implementation and charges that it could become a legal avenue to capriciously harass women. In reality the bill is designed to remove

³ B.R. Sharma, N. Gupta, N. Relhan, “*There is such a thing as too many daughters, but not too many sons*”: A qualitative study of son preference and fetal sex selection among Indian immigrants in the United States,” *Social Science and Medicine* 72, no. 7 (April 2011) 1169-1176.

harassment by providing legal recourse for women in coercive situations. As is borne out in these women's experiences, the social pressures to abort a female child commonly come from gravely misguided loved ones such as a husband or mother-in-law. This law sends the clear message that this form of harassment is unacceptable.

Arizona Sex Selection Abortions Prohibited
 HB 2443 Enacted 3/29/11

Conscience Protections

To date, 47 states have extended conscience protections to healthcare providers and institutions that object to participating in abortion or contraception. The medical profession is rife with ethical dilemmas, and these measures ensure those who are entrusted to make healthcare decisions are not forced to pit their careers against their consciences. As a baseline, most of these laws protect individuals as well as private, public and religious institutions from being coerced against their beliefs into participating in abortion.⁴ In 10 states, a patchwork of varying protections are in place to protect pharmacies and pharmacists opposed to dispensing contraception.

Seven states introduced conscience protection legislation this session. So far, only Utah has passed and enacted a new conscience protection law and it is likely to be the only one. Bills in South Carolina and Kentucky were able to clear a chamber before being defeated. All the bills introduced and advanced sought to expand and favorably clarify existing law. Utah's bill, for example, extends freedom of conscience to medical facilities not covered in the previous provision and spells out prohibited "adverse actions" that could be used to retaliate against an

⁴ Guttmacher Institute, "Refusing to Provide Health Services," http://www.guttmacher.org/statecenter/spibs/spib_RPHS.pdf (June 1, 2011).

objector. These actions include refusing to provide benefits, privileges, raises and promotions to which the person would have otherwise been entitled. Most of these more expansive bills also provide for detailed civil remedies in the event discrimination does take place.

Most of the challenges to conscience protection laws do not come from neglected patients or persons whose lives have been endangered due to someone's refusal to provide care. The truth is, most instances of conscientious objection deal with non-life threatening elective procedures, such as abortion, physician assisted suicide, sterilization and contraception. Also, rarely is it an issue of access, as whatever obstacles are created by an objector can usually be easily overcome by visiting another healthcare provider or pharmacist. An article appeared in Salon magazine recently entitled, "Abortion Saved my Life," apparently written by a woman who claimed she almost died after a doctor refused to perform a life saving abortion.⁵ The account fit the perfect horror story narrative of a woman hemorrhaging to death while an objecting doctor sat idly by. The story was curiously remiss on needed details given its serious allegations. The identity of the doctor was withheld as was any reason why legal action was foregone. When pressed by a media watchdog group for these apparent non sequiturs, the author admitted to artistically embellishing the story beyond serious credibility.⁶

More often than not, challenges to conscience protections come rather from pro-abortion groups seeking to mainstream abortion as healthcare and bring its status into parity with other essential procedures. Protecting healthcare professionals' and providers' rights of conscience

⁵ Mikki Kendall, "Abortion Saved My Life," *Salon*, 26 May 2011, http://www.salon.com/life/feature/2011/05/26/abortion_saved_my_life

⁶ Jill Stanek, "Salon Writer Admits Embellishing Abortion Story," *News Busters*, 31 May 2011, <http://www.newsbusters.org/blogs/jill-stanek/2011/05/31/salon-writer-admits-embellishing-abortion-story>

affirms the reality of the great number of Americans who find abortion morally repugnant. It's not a barrier to access as much as it is a barrier to acceptance, which is unacceptable to them.

	Conscience Protections	
Idaho	H 187	Enacted 4/6/11
Kentucky	SB 10	Passed Senate 2/22/11
Utah	HB 353	Enacted 3/23/11
South Carolina	H 3408	Passed House 3/31/11

Prohibiting Insurance Policies Provided on State Exchanges from Including Abortion Coverage

Even though the Patient Protection and Affordable Care Act (Obamacare) is a federal law, much of the healthcare overhaul's details are for the states to fashion and implement. For example, the law requires that each state establish a state run insurance exchange by 2014. In theory, these state exchanges are supposed to be a sort of one-stop health insurance shop where competing plans will be made available to the public. In most states these exchanges are still in a nascent stage of development making it unclear just exactly what will be covered when these plans are made available. That being said, half the states in the union introduced legislation in 2011 to make it clear that abortion is *not* to be included (5 such bills passed in 2010).

Of these 25 states, 5 states were able to pass out of one legislative chamber bills prohibiting abortion coverage on insurance plans offered through their state exchange. 8 states

were able to enact bills that gained passage and 2 were passed but vetoed by Democrat governors. Very simply, most of the bills, like Nebraska’s “Mandate opt-out and Insurance Clarification Act” do exactly as their titles suggest. They allow the state to opt-out of any top down mandate that elective abortions be covered and allow exceptions if the life of the mother is at risk or an individual doesn’t mind paying an extra premium out of their own pocket for a policy rider that includes abortion.

Even though federal statutory restrictions (the Hyde Amendment) prohibit using federal money for abortion, pro-lifers are right to feel there is still much to be desired. The Obama administration is the most pro-abortion in the nation’s history. Unless explicitly restricted in law, you can assume they will do everything in their power to fund abortion through Obamacare.

Prohibiting State-Exchange Insurance Coverage

Alabama	SB 202	Passed Senate 5/31/11
Arkansas	SB 113	Passed Senate 4/27/11
Florida	H 97	Enacted 6/21/11
Georgia	SB 177	Passed Senate 4/12/11
Idaho	S 1115	Enacted 4/1/11
Indiana	HB 1210	Enacted 5/16/11
Minnesota	HF 201	Vetoed 5/25/11
Montana	SB 176	Vetoed 4/28/11
Nebraska	LB 23	Enacted 5/18/11
Oklahoma	SB 547	Enacted 4/20/11
Rhode Island	S 87	Passed Senate 4/6/11
Utah	HB 354	Enacted 3/23/11
Virginia	HB 2147	Passed House 2/17/11
Virginia	HB 2434	Enacted 4/6/11
North Carolina	HB 200	Enacted 6/15/11
Kansas	HB 2075	Enacted 5/25/11

State Constitutional Amendments Prohibiting Right to

Abortion

State constitutions provide another avenue for both pro-life and pro-abortion advocates to affect state policy. Currently, courts in 16 states have interpreted into their state constitutions broad rights to abortion. In many cases, such as in Florida and Tennessee, courts will apply an expansive interpretation of the privacy clause to challenge abortion restrictions such as parental notification, waiting periods and informed consent laws. Fortunately for Florida and Tennessee this year, they were able to pass proposals to amend their constitutions to explicitly state that nothing in the law can be interpreted or construed to provide a right to abortion or its funding. The amendments will appear on the 2012 ballot for Florida and the 2014 ballot for Tennessee. Montana was able to pass an amendment proposal through its House before the measure failed.

If approved by voters, these amendments will nullify court manufactured rights to abortion and prevent judges in the future from legislating from the bench. In addition, these amendments also ensure taxpayers are protected from paying for abortion.

State Constitutional Amdt. Prohibiting Right to Abortion		
Florida	H 1179	Passed (2012 Ballot)
Montana	HB 574	Passed House
Tennessee	SJR 127	Passed (2014 Ballot)

Parental Consent and Notification

Right now, 36 states have requirements that mandate some level of parental involvement before a minor can receive an abortion. Twenty-five of these states require parental consent and eleven require parental notification. Minus New York, Delaware, Vermont, Oregon and

Washington that have no requirements, the rest of the states have laws on the books that are either enjoined, not enforced or currently in litigation.⁷

This year saw eighteen states introduce bills that would either strengthen or clarify parental involvement. Florida, North Dakota and Kansas enacted provisions that reign in their judicial bypass process, where there is little oversight. The best news came out of New Hampshire where the legislature reinstated, over the Governor's veto, a parental notification act that requires 48 hours written notice, in person or by mail, to a parent or guardian before an abortion can be performed on a minor. The overwhelming override vote sent a strong message to Governor Lynch who, back in 2007, gave Delaware the distinction of being the first state to repeal a parental notification law.

Parental notification requirements are key in protecting the constitutional rights of parents and the traditional role they have in raising their children. It is particularly upsetting when these sorts of laws run into challenges considering parental notification is necessary for just about every other non emergency procedures performed on minors. Common sense says that the parents who know the most about the medical history of their daughters should be involved in a procedure that has demonstrable psychological and developmental risks.⁸ Equally important, notification requirements help prevent statutory rape and human trafficking cover ups. Instances in Ohio, Massachusetts and Connecticut, not to mention sting operations performed by Live

⁷ "Defending Life 2011," *Americans United for Life*, 2011, <http://www.aul.org/dl2011-abortion/> (accessed 2 June 2011).

⁸ "Defending Life 2011," *Americans United for Life*, 2011, <http://www.aul.org/dl2011-abortion/> (accessed 3 June 2011) 96.

Action, have demonstrated the complicity of abortion providers in covering up sex abuse crimes.⁹

Strengthen Parental Consent/Notification		
Florida	H 1247	Enacted 6/24/11
Kansas	HB 2035	Enacted 4/12/11
Montana	HB 627	Passed (2012 Ballot) 5/2/11
New Hampshire	HB 329	Enacted (over veto) 6/23/11
North Dakota	HB 1297	Enacted 4/20/11

Ultra Sound/Informed Consent and Waiting Periods

Prior to an abortion, a woman has a right to know all the information available that could better equip her in making this tough decision. Just as parental notification requirements are designed to ensure that someone mature is party to the decision, ultrasound requirements, informed consent laws and mandatory waiting periods are designed to ensure the decision is made voluntarily, free of any coercion, and on good information.

Thirty-four states have some form of counseling requirement.¹⁰ Twenty four of these states couple these informed consent requirements with waiting periods (generally 24 hours). Seven states have informed consent without waiting periods and five states have measures on the books, but they are enjoined or in litigation.¹¹ Generally speaking, this information includes specifics of the procedure, its risks, responsibilities of the father and the availability of medical

⁹ For Ohio see: “Judge Rules in Favor of Woman Suing Planned Parenthood,” News 5, accessed Feb. 2, 2011, <http://www.wlwt.com/health/26081295/detail.html>. Massachusetts: “Judge Rules in Favor of Woman Suing Planned Parenthood,” News 5, accessed Feb. 2, 2011, <http://www.wlwt.com/health/26081295/detail.html>. and: Peter Bronson, “Abortion Clinic Covers-Up Incest,” *Coshocton Tribune*, May, 12 2007. Connecticut: Donna Tommelleo, “Charges Added in Alleged Abduction,” *Boston Globe*, August 2, 2007.

¹⁰ “Counseling and Waiting Periods for Abortion,” Guttmacher Institute, http://www.guttmacher.org/statecenter/spibs/spib_MWPA.pdf (accessed 3 June 2011).

¹¹ “Defending Life 2011,” Americans United for Life, 2011, <http://www.aul.org/dl2011-abortion/> (accessed 3 June 2011).

benefits. More recently and with great result, requiring the opportunity to view an ultrasound image has been added to twelve states' informed consent requirements.

Anyone who has worked in a crisis pregnancy center can tell you how vital an ultrasound machine is—nothing quite compares to the perspective afforded by a window into the womb. With beautiful simplicity, an ultrasound image cuts through the coolly clinical and sterilized language used in describing an abortion and shows what it really is, the taking of a life.

Nineteen states introduced ultrasound bills this year, 6 advanced through one chamber, and two states, Arizona and Texas, enacted new ultrasound bill. Texas Right to Life had been pushing their state's ultrasound bill for five years. Thanks to Governor Perry, who prioritized the bill, and a pro-life majority in the statehouse, this truly lifesaving legislation was able to pass.¹² South Dakota also made news with passage of its bill that includes a mandatory 72 hour waiting period between when a woman is first counseled and when a doctor may perform an abortion, the longest waiting period in the nation. On May 27, Planned Parenthood challenged the law and it has yet to be seen how the court will rule.

Require Ultrasound/Informed Consent or Waiting Period		
Arizona	HB 2416	Enacted 4/2/11
Florida	H 1127	Enacted 6/24/11
Indiana	SB 328	Passed Senate 3/28/11
Indiana	HB 1210*	Enacted 5/16/11
Kentucky	SB 9	Passed Senate 2/22/11
Montana	HB 544	Passed House 4/28/11
North Carolina	H 854	Passed House 6/14/11
South Dakota	HB 1217*	Enacted 3/28/11

¹² Andy Hogue, "Governor signs sonogram bill; 'It's God's issue,' author says," *Lonestar Report*, 24 May 2011, <http://www.lonestarreport.org/Home/tabid/38/EntryId/1175/Governor-signs-sonogram-bill-Its-Gods-issue-author-says.aspx> (accessed 2 June 2011).

Texas	HB 15	Enacted 5/19/11
Virginia	HB 1042	Passed House 3/8/11
Wyoming	HB 251	Passed House 2/25/11

*Reaffirmed existing Ultrasound bill in omnibus measure

Abortion Clinic Regulations

Everyday Americans rely on a system of licensing standards, equipment regulations and inspection schedules to ensure the healthcare they are receiving at clinics is the safest it can be. Abortion clinics are places where potentially dangerous invasive surgical procedures are performed. Yet when it comes to their regulation, many states perpetuate an abysmally substandard system of regulations for purely political reasons. Abortion proponents are wary of promoting abortion clinic regulations for fear pro-life lawmakers might use the regulations to leverage frivolous and “undue” restrictions on women and abortion providers with the intent to drive them out of business.

This political “abuse negates use” mentality has long allowed for real and horrendous abuses to happen. Egregious breaches in safety and sanitation have occurred at abortion clinics in South Carolina, Texas, Arizona and Kansas. Each of these states has now enacted comprehensive abortion clinic regulations.¹³ Unfortunately, these tragedies are sometimes necessary to awaken people, and no tragedy was as eye-opening as the horrors of what happened this year at a clinic in Philadelphia. There, abortionist Kermit Gosnell delivered and killed seven viable babies with scissors, stored their remains in a freezer and lethally dosed a woman with painkillers.¹⁴

¹³ *Defending Life 2011*, Americans United for Life, 2012, <http://www.aul.org/dl2011-abortion/> (accessed 2 June 2011).

¹⁴ Tom McClusky, “Kermit Gosnell’s Legacy of Death,” *National Review*, 29 March 2011, <http://www.nationalreview.com/corner/263335/kermit-gosnells-legacy-death-tom-mcclusky> (accessed 2 June 2011).

Thankfully, Pennsylvania and neighboring Delaware both considered bills that would regulate abortion clinics more closely. Delaware's bill has been enacted and, at the time of this writing, Pennsylvania's bill has cleared the Senate.

Twenty states across the nation introduced bills this year that would have bolstered abortion clinic regulations, five advanced through a chamber while four others were successfully enacted. Each state regulates clinics differently. In Virginia, Governor Bob McDonnell signed legislation that requires abortion clinics to be treated like hospitals and instructs the Department of Health to create specific regulations to that end. Pennsylvania, Arkansas, Delaware and Utah all enacted bills placing abortion clinics under the inspection and licensing authority of their state's Department of Health.

Not yet passed, but introduced in Louisiana, is a bill that would require abortion clinics to "conspicuously" place a sign at their entrance with information designed to give people pause. A twist on a tactic that's been used to diminish crisis pregnancy centers, it would read:

Notice: Women's Rights and Pregnancy Resources

You can't be forced.

It is unlawful for an abortion to be forced on you without your voluntary and informed consent, regardless of your age.

You and the father.

The father of your child is liable to assist in the support of the child, even if he has offered to pay for an abortion.

You and adoption.

The law permits adoptive parents to pay costs of prenatal care, childbirth and newborn care.

You are not alone.

Many public and private agencies are willing to help you to carry your child to term, and to assist after your child's birth.¹⁵

Stricter Clinic Regulations		
Arkansas	HB 1855	Enacted 4/5/11
Delaware	HB 47	Enacted 5/4/11
Florida	H 1397	Passed House 5/7/11
Indiana	SB 328	Passed Senate 3/28/11
Iowa	SF 534	Passed (await Gov.) 6/8
Louisiana	HB 636	Passed House 6/14/11
Mississippi	SB 2617	Passed Senate 3/1/11
Oklahoma	HB 1642	Passed House 3/22/11
Pennsylvania	SB 732	Passed Senate 5/10/11
Utah	HB 171	Enacted 3/22/11
Virginia	SB 924	Enacted 3/26/11

Fetal Pain and Post-Fertilization Limitations

In 2010, Nebraska became the first state to enact a bill recognizing the ability of the unborn to feel pain at twenty weeks gestation. One year later, eighteen states have introduced similar bills, five have cleared at least one chamber, one has been vetoed and four successfully signed into law.

The limitations are based on a growing body of evidence suggesting that after 20 weeks a fetus can be sufficiently developed enough to sense pain. Even though the issue lacks a consensus in the medical community, most agree justice and compassion compel such things as anesthetizing fetuses prior to fetal surgery. A sort of “benefit of the doubt” is extended to

¹⁵ *Forced Abortion Prevention Sign and Woman's Right to Know Act of 2011*, Louisiana HR 636. <http://www.legis.state.la.us/billdata/streamdocument.asp?did=742387> (accessed 6 June 2011).

developing fetuses well before the end of the first trimester, even though a specific pain-capable moment cannot be pinpointed.¹⁶

Advancements in medicine and technology have given us 3D ultrasounds, rich knowledge of embryology and the ability to perform prenatal surgery. Most importantly, these advancements have given us an evolved appreciation for the human fetus that goes well beyond the dismissive notion that it is a blob of tissue, making that old line of thinking not only anachronistic, but also morally irresponsible.

Even though the percentage of abortions being performed after 20 weeks constitutes a very small number of abortions overall, the full import of these fetal pain bills is found in how they're predicated on the rights of a fetus. Recognizing there are two parties to an abortion, the woman and baby, both with competing rights, marks a paradigm shift in how abortion is discussed. Not only do these bills give pause to conventional wisdom, they also give pause to conventional legal thought. Limiting abortion at 20 weeks upends the court's viability test established in *Roe* that allows states to restrict abortions, but only after it is determined the fetus has a probability of living outside the womb, generally at twenty-three weeks. With the success these bills have seen, it's a safe bet that legal challenges should be expected.

Fetal Pain Bills/Viability Limitations

Alabama	HB 18	Passed (await Gov.) 6/9/11
Florida	H 1397	Passed House 5/7/11
Idaho	SB 1165	Enacted 4/16/11
Indiana	HB 1210	Enacted 5/16/11
Iowa	HF 657	Passed House 5/16/11
Kansas	HB 2218	Enacted 4/8/11
Minnesota	HF 936	Vetoed 5/25/11
Missouri	HB 213	Passed (await Gov.) 5/26/11

¹⁶ Ashley Frogoso, *Fetal Pain: Can Unborn Children Feel Pain in the Womb?* (Washington, D.C.: Family Research Council, 2010) 9.

Ohio
Oklahoma

SB 72
HB 1888

Passed Senate 4/12/11
Enacted 4/20/11

Heartbeat Bills

Going by titles such as the “Human Heartbeat Protection Act,” heartbeat bills would, if successfully argued, prohibit abortions after the first sign of a developing child’s detectable heartbeat. A heartbeat can be detected at the very early stages of the first trimester. This has been the first year bills of this kind have ever been introduced and, as yet untested, have a lot of people questioning their efficacy and intent.

Heartbeat bills are a clear provocation of *Roe*’s viability test and are meant to force the issue into the courts. If passed, the bills would necessarily require a new test that recognizes there are two parties to an abortion, woman and child, both having rights. But failed heartbeat bills, could occasion a stricter return to *Roe* and provide fodder that could jeopardize the realized successes of other pro-life measures such as fetal pain limitations.

Two states have introduced heartbeat bills, Arkansas and Ohio. In both states the bills were able to gain passage in the House. Arkansas has since adjourned leaving all eyes on Ohio.

Heartbeat Bills		
Arkansas	SB 843	Passed House 4/27/11
Ohio	HB 125	Passed House 3/30/11

Personhood Bills

“Personhood” bills can take different forms but seek the same goal: to redefine the current legal definition of persons so as to include all, “humans from the moment of fertilization

and implantation in the womb,” and extend to them the constitutional right to life. A sort of panacea to all of *Roe*’s woes, what personhood bills have in ambition they generally lack in support. Debate is ongoing among those in the pro-life movement regarding the practicality and enforceability of personhood measures.

Some hold that it would be a compromise of pro-life values to advocate for anything less than defining personhood at conception. Others maintain that while *Roe v. Wade* is in place, personhood laws are unattainable and should, therefore, be abandoned in favor of laws that incrementally correct abortion’s excesses.

Regardless of the varying opinions surrounding personhood legislation, one thing that remains constant is the fact that they are routinely introduced in many state legislatures. This last session saw twelve states introduce personhood bills, four of these states were able to pass the bill or amendment proposal out of one legislative chamber. Two states in particular, Louisiana and Alabama, have many hoping that these bills will make their way to the desks of the Republican governors in those states.

The citizens of Mississippi will be given a chance to vote on a personhood ballot initiative this coming November given, of course, the referendum stands up against the court challenge of Planned Parenthood and the ACLU in that state. Because the implications of passing a personhood measure would be to effectively outlaw abortion, Planned Parenthood and the ACLU challenge referendum efforts in every state that has successful signature drives.

Personhood Bills		
Alabama	SB 301	Passed Senate 6/2/11
Montana	HB 490 Con Amdt	Passed House 4/28/11
North Dakota	HB 1450	Passed House 4/7/11
Oklahoma	HB 1571	Passed House 3/23/11
Virginia	HB 1440	Passed House 2/17/11

*Con Amdt. Indicates Bill was an amendment to the states constitution.

Crisis Pregnancy Centers

Crisis pregnancy centers stand at the front lines of the pro-life movement. They serve with compassion and integrity women who are at the most risk of aborting their pregnancies. It's not uncommon for state legislatures to pass resolutions commending these centers and the tireless people who commit so much to their operation. South Dakota, Arizona, Wisconsin, Georgia and Missouri all took up resolutions this year recognizing the contributions crisis pregnancy centers make to the community. These are more than just token nods since recognition is key when considering appropriations, grants and tax credits. Provisions for state funding have cleared chambers in Kansas and Missouri.

	Crisis Pregnancy Centers	
Arizona	HCR 2034	Passed House 4/19/11
Georgia	SR 475	Passed Senate 3/28/11
South Dakota	SCR 1	Enacted 1/31/11
Missouri	HR 1826	Passed House 5/10/11
Wisconsin	AJR 34	Introduced 5/17/11

Prohibiting State Funds to Abortion Providers

After failing at the national level, the effort to prohibit taxpayer funding from going to abortion providers shifted to the states. Indiana, North Carolina, Texas, Wisconsin and, to a certain extent Oklahoma, all took up bills that would set limits on appropriations or grant money from going to organizations such as Planned Parenthood. Most states generally follow the federal

funding standard laid out in the Hyde Amendment, to a broader or looser degree, that says no public money can go directly to fund abortion except in cases of rape and incest, or where the health of the mother is in question.

Prohibiting funding to abortion providers and their affiliates has long been a goal for pro-lifers who understand that money is fungible. Any funding given to an abortion provider, even if it doesn't specifically pay for abortion, has the effect of freeing up resources that can then be used for abortion services. It's this indirect funding that has been zeroed out in Indiana's omnibus abortion law, HB 1210. The bill signed into law by Governor Daniels this session states:

An agency of the state may not: (1) enter into a contract with; or (2) make a grant to; any entity that performs abortions or maintains or operates a facility where abortions are performed that involves the expenditure of state funds or federal funds administered by the state.¹⁷

Indiana's abortion law has since run afoul of Health and Human Services' Donald Berwick, who claims it is unfair to target a provider on account of their "scope of practice." It has yet to be seen how a law like this will fare in the courts, in the meantime U.S. District Court Judge Tanya Pratt has enjoined Indiana's bill from going into effect. Similarly, North Carolina's budget cut funding to Planned Parenthood and ran into problems, a Governors veto, that was thankfully overridden. Tennessee appeared to be on track to defund Planned Parenthood in their budget as well, but they had an anonymous amendment in the eleventh hour of their budget negotiations that restored that funding. Governor Haslam, while not willing to line item veto the

¹⁷ *An Act to Amend Indiana Code Concerning Health*, HB 1210, 117th General Assembly, 1st sess. <http://www.state.in.us/legislative/bills/2011/HE/HE1210.1.html> (accessed 6 June 2011).

amendment, has reallocated \$335,000 in state funding to non-abortion providing entities. In New Hampshire, the Executive Council voted 3 -2 against funding a contract in the amount of 1.8 million dollars with Planned Parenthood of Northern New England. Following Kansas, Wisconsin’s Joint Finance Committee approved a measure recently that would defund abortion providers in the state budget--Governor Walker appears poised to sign this budget. Finally, Texas successfully cut \$73 million from Medicaid’s Women’s Health Program, a Medicaid waiver program whose funds went to Planned Parenthood. These inroads will certainly force the issue.

While Planned Parenthood has labeled this a “war on women,” this is really a war on funding with our tax dollars organizations that provide for abortion, lobby for abortion—stand for abortion—something recent Gallup polls show most Americans find “morally wrong.”

Prohibiting Funds to Abortion Providers

Indiana	HB 1210	Enacted 5/16/11
Kansas	HB 2014	Enacted 6/1/11
Minnesota	SF 1224	Introduced 4/18/11
North Carolina	HB 200	Enacted (over veto) 6/15
Okalahoma	SB 709	Introduced 5/20/11
Texas	SB 1854	Passed Senate 5/25/11
Wisconsin	AB 40	Enacted 6/27/11

Telemed Abortions/RU-486

In a telemed abortion, a pregnant but otherwise completely healthy woman is put in a room, connected virtually with a physician through a computer screen and counseled through a dangerous chemical abortion procedure. A “nurse,” who may or may not be licensed, is on call

to help administer the abortifacient, RU-486, and the woman is then sent home with several more pills to administer herself. She never has a physical examination by a doctor and any follow-up care is severely limited, if available at all. Once home, the woman experiences an induced miscarriage and is left to deal with any complications that may arise.

To date, eight women in the U.S. have died and thousands more have suffered severe adverse effects due to complications arising from RU-486.¹⁸ Even abortion providers have approached the non-surgical method with hesitancy as it's *10 times* more likely to end in death than surgical methods, begging the question: access at what cost?¹⁹

Planned Parenthood has plans to expand the use of telemed abortions to every clinic in the country by 2015. Fortunately, thanks to several proactive state legislatures that have passed laws this session banning telemed abortions, they will not be able to do so. Arizona, Kansas, Nebraska, and North Dakota have passed bills outlawing the use of telemed abortions and further regulating the use of RU-486.

	Restricting RU-486/Telemed	
Arizona	SB 840	Passed Senate
Missouri	HB 28	Passed House 4/14/11
Nebraska	LB 521	Enacted 5/27/11
North Dakota	HB 1297	Enacted 4/20/11
Oklahoma	HB 1970	Enacted 5/11/11

Marriage Issues

¹⁸ Letter from David W. Boyer, Assistant Commissioner for Legislation, Food and Drug Administration, to Subcommittee on Criminal Justice, Drug Policy and Human Resources (May 2, 2006) (on file with Subcommittee).

¹⁹ Gardiner Harris, "[Some Doctors Voice Worry Over Abortion Pills' Safety](#)," *The New York Times*, (Accessed Sept. 27, 2010).

So far this year, the states have considered the full spectrum of marriage legislation from marriage protection amendments to bills that would legalize same-sex marriage. These bills have tested political wills and assumptions along the way. Here we'll showcase a few salient developments at the state level that have challenged how some of these assumptions are premised.

Of course the first piece of legislation that comes to most people's minds is New York's same-sex marriage bill. The controversial bill gained narrow passage in the late night hours of June, 24 following weeks of heavy lobbying and closed room dealings. Governor Cuomo, one of the bill's leading advocates, quickly signed the legislation making New York the sixth and largest state in the nation to allow gay marriage. Some have said this victory portends the demise of traditional marriage in America and while certainly not a promising development for religious expression and pro-family policies in the public square, this speculation should be checked against the efforts in other parts of the country. New York marked the last and therefore the most focused effort in a long line of missed opportunities for gay activists, a sign of the deep and continued contentiousness of the issue.

In May, Minnesota passed a proposal to add an amendment to the State's constitution defining a marriage as between one man and one woman. In all, 31 states have added marriage protection amendments to their constitutions, essentially bolstering existing marriage law against activist judges and special interest groups that would have the institution redefined against the majority of the state's wishes. This measure was a reaction to a strategy by the left, which has come to rely on the courts to enact their agenda. The stock criticism of marriage amendments has

been, “the civil rights of a minority should not be decided by vote.” So, the left would have a judge who agrees with them, as opposed to voters, decide the meaning of marriage.

No matter the outcome in Minnesota in 2012, most Americans should bristle at policy making being done through judicial fiat. Indiana, Iowa, Wyoming, West Virginia and North Carolina have followed in taking up marriage protection amendments.

In Rhode Island, homosexual groups declared it “fox season” when one of their own, openly gay House Speaker Gordon Fox, failed to whip the support he needed to pilot legislation redefining marriage through their Senate. Even though the whole state is considered deep “blue,” the effort proved “politically infeasible.” Fox opted instead to compromise on a civil unions bill to the great perturbation of *both* sides.

Likewise, this March in Maryland, it appeared a same-sex marriage bill would gain eventual passage. However, the bill that passed in the Senate failed to gain passage in the traditionally more liberal House. This episode in yet another Democrat controlled statehouse demonstrated once again the push to redefine marriage is not a partisan issue. It is rather an American issue that raises legitimate concerns regarding religious liberty.

Delaware and Hawaii both passed civil union bills this year bringing the count to eight states that recognize either civil unions or domestic partnerships. Six other states introduced bills that didn’t succeed. It will be interesting moving forward to see how appealing civil unions continue to be as a sort of compromise between the marriage camps. If Rhode Island is any indication, it may be dim. Their bill, which will likely pass, affords gay couples in civil unions the same rights, responsibilities and privileges as a married heterosexual couple. Really, the only thing not accommodating them would be the word “marriage.” However if you listened to outcry

coming from the left you'd think this omission was perpetuating some nefarious system of sexual apartheid.

Neither are defenders of traditional marriage fond of civil unions. Who are they fooling? Civil unions are not a political compromise as much as they are a political waypoint on the path towards same sex marriage. Civil union bills have been used to shut down Catholic adoption agencies like the one in Boston and, more recently, in Rockford Illinois, all because these organizations have remained steadfast in their convictions that children ought to have a married mother and father. The last thing civil unions seek is compromise; their true design is to crowd out and conquer any obstacle that stands in the way of whole hearted acceptance of same sex marriage.

For those who support traditional marriage, the 2011 state legislative session has been a reminder the fights continues. People really do not want renegade judges or small groups of lawmakers redefining marriage. This issue concerns all people, regardless of race or political affiliation, and there are legitimate concerns attached to same sex marriage, especially when it is clear compromise is off the table.

Civil Unions/Domestic Partnerships

Colorado	SB 172	Passed Senate 3/31/11
Delaware	SB 30	Enacted 5/11/11
Florida	H 337/ S 348	Introduced 5/7/11
Hawaii	SB 232	Enacted 2/24/11
Maryland	SB 116	Passed Senate 3/11/11
Massachusetts	HB 2867	Introduced 5/13/11
New Hampshire	HB 569	Introduced 3/17/11
Pennsylvania	SB 461	Introduced 2/9/11
Rhode Island	H 6103	Passed House 6/2/11
Washington	HB 1963	Introduced 4/26/11
Wyoming	HB 150	Introduced 2/28/11

Same Sex Marriage

New York	AB 8354	Enacted 6/26/11
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Marriage Amendment (one man one woman)

Indiana	HJR 6	Passed (2 nd assembly) 5/16
Iowa	HJR 6	Passed House 2/7/11
Minnesota	SF 1308	Passed (2012 ballot) 5/25
North Carolina	S 106	Introduced 2/23/11
West Virginia	HJR 18	Introduced 1/13/11
Wyoming	SJ 5	Passed Senate 2/28/11

Divorce Reform

North Dakota	SB 2367	Enacted 4/27/11
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Bathroom Bills

Many pieces of social legislation are fought and won solely on messaging. When homosexual advocate groups attach gender identity, gender expression or perceived gender identity protections to contract, adoption, employment and hate crime “anti-discrimination” bills, or as they’re apt to call them, “anti-bullying” bills—it’s hard not to go along. Supporting bullying, hate crimes or discrimination is certainly not a good position. However, these bills are really about and that’s how they are messaged, legislating acceptance of a behavior and confusing traditional gender roles.

Family Research Council and like-minded organizations refer to these bills as “bathroom bills,” because nothing illustrates their reckless abandon of common sense better than some of their bathroom provisions. Take this one from Maine’s HB 502:

Notwithstanding the provisions of this section or any other special or general law to the contrary, all otherwise lawfully sex-segregated facilities, accommodations, resorts and amusements shall grant persons admission to and the *full enjoyment* of such facilities,

accommodations, resorts and amusements consistent with their gender identity or expression. [emphasis added]

The reality is separate bathrooms for men and women isn't so much a policy of discrimination as it is a recognition of the real life differences between genders. Just because someone identifies as a woman does not mean that person has full rights to use the women's restroom to their full enjoyment.

Thirty-eight states introduced bills this legislative session that would contribute to confusion and disagreement in gender issues and chill real debate in favor of misguided messaging. Two states in particular had watershed years for bathroom bills, Hawaii and Nevada, both of which have civil unions/domestic partnerships. These laws will undoubtedly equip homosexual activists with legal avenues to harass and silence their political enemies.

Despite bullying by homosexual activist groups and misdirection to push their agenda, cooler heads can prevail. Such was the case in Tennessee with the passage of their "Equal Access to Intrastate Commerce Act" (HB 600). The pro-business bill was supported by Tennessee's Chamber of Commerce to uniformly standardize the state's anti-discrimination regulations. This greatly angered homosexual groups that had fought to establish a bathroom bill style city ordinance in Nashville—the only place in the state with such an ordinance.

Bathroom Bills		
California	AB 673, AB 887, AB 1364, AB 1395, AB 1407, SB 48, SB 117	Passed either Assembly or Senate
Colorado	SB 72	Passed Senate 4/6/11
Connecticut	HB 6599	Passed Legis. 6/14/11
Hawaii	HB 546	Enacted 5/2/11
Maryland	HB 235	Passed House 4/6/11

Nevada	AB 154, AB 211, SB 331, SB 368	Enacted 5/29/11
New Hampshire	HB 623	Passed House 6/8/11
Rhode Island	H 5089	Passed House 6/1/11
Tennessee	HB 600	Enacted 5/31/11
Virginia	SB 66	Passed Senate 3/14/11

Conclusion

Think globally and act locally—it would be remiss to conclude on anything other than how important a vote matters, especially at the state and local level. Hopefully, this legislative report contributes to breathing new life into what’s too often tired cliché. Pro-life legislation is on the ascendancy because concerned citizens continue to force the issue, they work to stay informed, they communicate with their lawmakers and galvanize friends and family to get to the polls. Assaults on traditional marriage can be halted and reversed if we can accurately return the argument to its child-centeredness and away from false notions of equality.

At FRC we have the privilege to work with many dedicated Family Policy Councils across the country. Without their efforts in many state Capitols and local municipalities none of these pro-family initiatives would ever see the light of day. It is important work that is bearing fruit and shifting the national discourse in positive directions.

We encourage you to get involved and continue this important work! For more information on your state’s Family Policy Council go to Family Research Council’s webpage at: <http://www.frc.org/state-policy-organizations>.

This report was compiled by Nick Frase, Research Assistant, with special thanks to Brianna Walden.