



Total Abortion Ban

KEY POINTS

Life begins at conception. Total Abortion Bans recognize this fact and **prohibit abortion at all stages.**

Roe v. Wade and *Planned Parenthood v. Casey* prevent states from protecting unborn life in all circumstances. So far **no pro-life legislation has resulted in a successful challenge** to these bad precedents.

Total Abortion Bans **directly counter** the Supreme Court's flawed arguments in *Roe* and *Casey* that constitutionalized a right to abortion.

Family Research Council recommends and supports Total Abortion Bans. Life begins at conception, and pro-life legislative initiatives are strongest when they are consistent with this truth.

Total Abortion Bans recognize the unborn have the right to life, prohibit abortion at all stages (the definition of abortion excludes actions taken that attempt to save the life of the mother or the child), establish a criminal penalty for noncompliance, indemnify the woman (*i.e.*, absolve her of legal liability), and create a cause of action for the state to enforce the law.

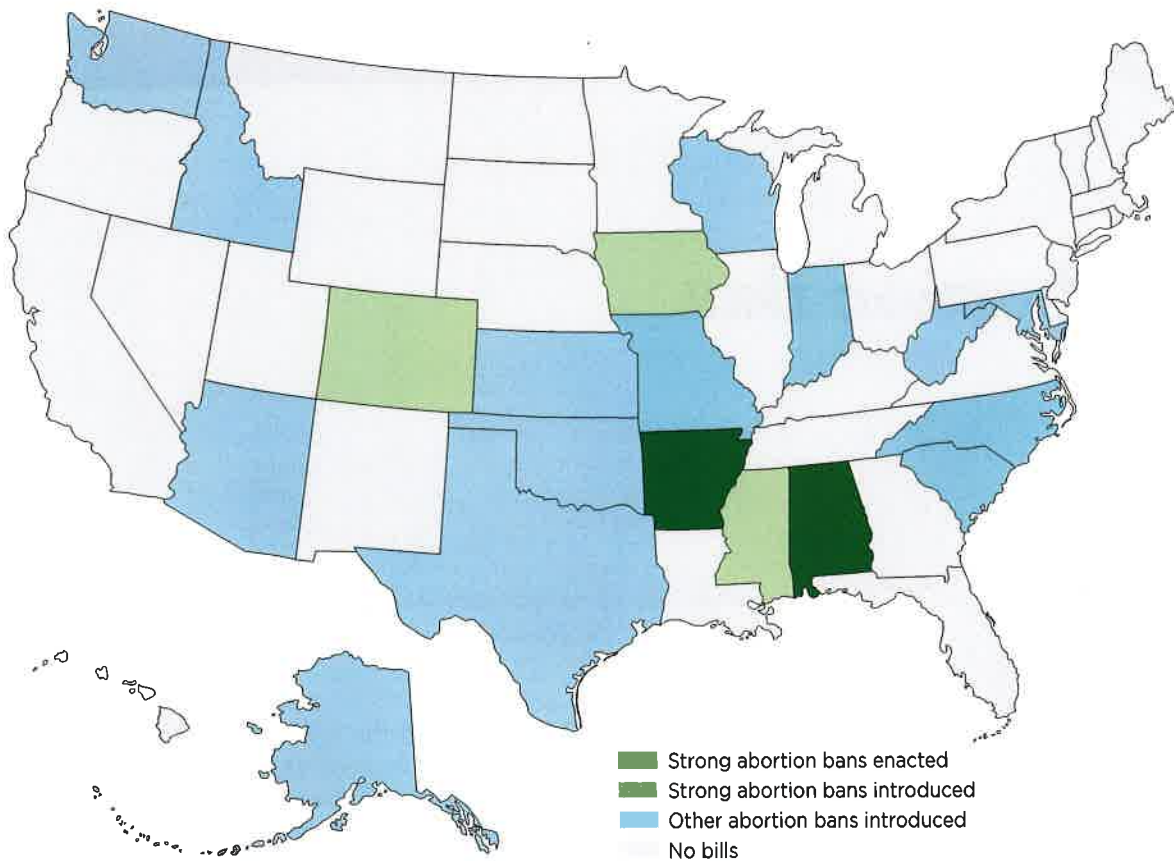
In 1973, the U.S. Supreme Court's decision in *Roe v. Wade* ruled that abortion is protected under the U.S. Constitution, striking down many state abortion restrictions and severely limiting the extent to which states could write their own abortion laws. The Court pegged the permissibility of abortions to the three trimesters of pregnancy (states could not restrict abortion in the first trimester but could completely outlaw abortion except when "necessary to preserve the life or health of the mother" in the third). The Court's 1992 decision in *Planned Parenthood v. Casey* reaffirmed the general holding of *Roe* but did away with *Roe's* trimester framework, stating that a state cannot impose an "undue burden" on a woman's attempt to obtain an abortion pre-viability (*i.e.*, prior to when the child is considered old enough to survive outside the womb). Both *Casey* and *Roe* make it incredibly difficult for states to regulate or ban abortion. Thus far, no pro-life legislative initiative has led to the reversal of *Roe* and *Casey*.

In the past four years, 19 states around the country have seized the opportunity to introduce legislation that bans nearly all abortions and directly challenges *Roe* and *Casey*. In 2021, a record-high 12 Total Abortion Ban bills have been introduced in 10 states. Three states—Alabama, Arkansas, and Oklahoma—have successfully passed legislation prohibiting most abortions. However, Alabama and Arkansas' bills have been blocked by lower courts and are pending litigation, while opponents of Oklahoma's bill have vowed to challenge it in court.

Legislative Intent: The U.S. Constitution does not include a right to an abortion. The U.S. Supreme Court's decisions in *Roe* and *Casey* ignored this fact.

Total Abortion Bans counter the Court's flawed decision in *Roe*. Many pro-life initiatives have taken an incremental approach, attempting to regulate abortion without violating the Court's decisions in *Roe* and *Casey*. Although laudable, these attempts have not prevailed against *Roe* when brought before the Supreme Court.

Total Abortion Bans



As of yet, the unborn have not been recognized as full human beings possessing the right to life. Although many states have already protected the life of the unborn through feticide laws, *Roe* and *Casey* prevent states from consistently protecting unborn life in all circumstances. This discrepancy highlights the dehumanization of the unborn in the context of abortion and the need for action on this issue.

Key Provisions:

- **Legislative findings** providing the legal rationale for prohibiting abortion and scientific facts about the unborn and abortion at different stages of development.
- **Defines an abortion** to exclude any action done with the intent of saving the physical life of the mother or the child.
- **Defines “serious health risk”** to exclude psychological or emotional conditions.
- **Defines unborn children** as individual organisms of the species homo sapiens, beginning at fertilization.
- **Prohibits abortion** at all stages.
- **Imposes criminal penalties** for noncompliance.
- **Indemnifies** the mother.
- Allows the **state to bring suit** to enforce the law.