

<http://somatosphere.net/2019/web-roundup-abortion-bans-heartbeat-bills-and-the-future-of-roe-v-wade.html/>

Web Roundup: Abortion Bans, Heartbeat Bills, and the Future of Roe v. Wade

2019-06-28 12:49:47

By Whitney Arey

[A year ago](#), I wrote about changes in abortion access globally, as countries like [Ireland](#) and [Argentina](#) were on a path to decriminalizing access to abortion services. While there have been both gains and losses in global abortion access since, 2019 has seen a drastic increase in U.S. [states passing abortion bans](#), including the [near total ban on abortion passed by Alabama](#), which also criminalizes physicians who perform the procedure. According to a recent [New England Journal of Medicine article](#), as of June 1st “26 abortion bans have been enacted in 12 states,” and more have been introduced by state legislatures. These bans have received increasing amounts of media coverage, on the [news](#) and [late night shows](#), which bring public attention to the issue. However, the popular conception of the “abortion ban” has contributed to [misinformation and confusion](#), leading [patients to call clinics](#), concerned that they might not be able to keep their appointments now that abortion is “banned” in their state. So far, [none of the recently passed bans on abortion in the first trimester are currently in effect](#) and abortion is still legal in all 50 states.

Recent abortion bans in the U.S. have taken a different form than many previous state abortion restrictions, which ostensibly [claim to improve women’s health](#) by regulating various aspects of abortion through waiting periods, clinic building requirements, and mandatory ultrasound viewing. Using the precedent in *Planned Parenthood v. Casey*, which allows states to regulate abortion provision as long as the regulations do not place an “undue burden” on people seeking abortion care, states have passed a series of Targeted Regulation of Abortion Providers (TRAP) laws, which has contributed to the closure of abortion clinics across the U.S. Research shows that TRAP laws “[put women’s health, safety, and well-being at risk](#),” decrease abortion access, and cause a [variety of adverse consequences](#) for people unable to obtain abortion care. Indeed, some TRAP laws such as [Texas H.B.2](#) have been found by the Supreme Court to be unconstitutional, despite *Planned Parenthood v. Casey*, as they [place an undue burden on women seeking abortion](#).

However, the [recent abortion bans](#) have moved from regulating aspects of

abortion care, to banning abortions at specific gestational ages in the first or second trimester. This shift reflects an attempt to [pose a constitutional challenge](#) to *Roe v. Wade*, which currently protects access to abortion before a fetus can be considered viable, [recognized at about 24 weeks gestation by the medical community](#). Thus, banning abortion before 24 weeks (which current bans attempt to do) goes against established legal precedent, and is currently unconstitutional. The recent [increase in state abortion bans](#) has been linked to the election of Donald Trump, as well as the [appointment of Brett Kavanaugh](#) to the Supreme Court, as they are “[designed as a vehicle to challenge Roe in the Supreme Court](#).” By knowingly writing unconstitutional laws, [pro-life political organizations who have crafted the model abortion ban legislation](#) are intending for pro-choice political organizations to challenge these laws, in hopes of forcing the Supreme Court to hear the case and overturn *Roe*.

The most common of these recent abortion bans are known as “[heartbeat bills](#),” which ban abortion when a fetal cardiac activity can be detected on an ultrasound machine, as early as 6 weeks into gestation. However, as various medical professionals have noted, the cardiac activity detectable at 6 weeks gestation is not that of a fully developed cardiovascular system; rather it is “[a group of cells with electrical activity](#),” that occurs from the development of the fetal pole – the [first visible sign of a developing embryo](#). Indeed, the use of the term “[heartbeat](#)” has been highly contested when discussing this bill. Organizations in the pro-choice political movement are against the use of the term, using “[6-week abortion bans](#)” to describe the legislation instead. The battle over [language used in writing these laws, as well as in media debates](#) about abortion has long been a characteristic of the political battle over abortion in the United States, with the terms “pro-life” and “pro-choice” themselves also being contested by opposing sides.

With heartbeat bills, the language is very intentional; it uses the heartbeat as a universal “sign of life” to draw on and ultimately establish a shared legal understanding of what it means to be “alive.” Furthermore, as one of the co-sponsors of the Georgia heartbeat bill said, the law “[establishes personhood at the point that that human heartbeat is detected](#)... (and) allows “for 14th Amendment rights of protection to go into effect.” This attempt to establish [personhood and ultimately citizenship rights](#) of the fetus through [medical technology](#) is not new (see Gammeltoft 2014; Ginsburg 1989; Morgan 2009; Oaks 2000; Taylor 2008). Debates about the [beginning and end of life](#) in science, philosophy and religion have changed with advancements in technologies and medical knowledge. While [last month’s web roundup](#) discussed the fascinating ethical issues that come from the clinical definition of brain death, “heartbeat bills” tackle this issue at the opposite end of the spectrum, by attempting to define the detection of a fetal heartbeat as the initiation of “life.” These

two cases are a prime example of the ongoing moral and ethical debate about our fraught understandings of life, death, and consciousness – although brain death can occur while there is still a heartbeat, heartbeats at the beginning of life are here differentially valued. Where developments in [ventilators](#) and [organ transplant](#) technologies allowed for the development of brain death as a category, ultrasounds have also contributed of new ways of seeing, and in this case hearing, a developing fetus.

However, Lisa Mitchell (2001) notes that what people see through the ultrasound “is neither self-evident nor natural, but historically and culturally contingent, and subject to interpretation” (20). While medical science may present the public and the patient with scientific “facts” about fetal development, this may differ vastly from the visual and phenomenological knowledge that comes from people’s interactions with ultrasounds; indeed boundaries between “seeing” and “knowing” are often inextricably intertwined, with each shaping the perception of the other (Jenks 1995; Petchesky 1987). Using medical information such as fetal pole cardiac activity in order to delineate a specific time when life (and therefore personhood, and citizenship) begins is a prime example of the ways that scientific information can take on a public and political life outside of the context in which it is created. It also shows the ways that morality is contested through medical science and technology, as well as through personal experience.

Finally, while these increasingly restrictive state abortion bans may be used to eventually pose a legal challenge to *Roe v. Wade*, a lack of access to abortion services is already prevalent within many parts of the U.S., placing an [undue burden on](#) many people seeking to access abortion care. The overlapping effects of restrictive legislation and abortion bans could prove detrimental for patients in already restricted situations. For example, this past week the Missouri Department of Health and Senior Services [declined to renew the license](#) of the state’s only abortion clinic, making it possible that [Missouri will become the first state in the U.S. without a clinic providing abortion care](#). This decision, combined with the [recently passed 8-week abortion ban](#), means that Missouri residents would likely need to travel to clinics in nearby states, increasing financial burdens on patients. Likewise, the [Hyde Amendment](#), passed in 1976, [prevents recipients of Medicaid](#) from using their federal health insurance to pay for abortions, which already creates a [systematic inequality in abortion access](#) for low-income patients, who [will be most impacted by the recent abortion bans](#). While the recent abortion bans have spurred some states to [protect the right to abortion in state constitutions](#) and [motivated many people to join in the pro-choice](#) political movement to [preserve abortion rights](#), this may not be enough for people who already live in a reality where abortion access is [severely limited](#).

Further Reading:

[The states considering/passing abortion bans](#)

[NPR guide to talking about abortion](#)

[“I’m building a wall around my uterus”: Abortion Politics and the Politics of Othering in Trump’s America – Elise Andaya](#)

A recent [Gallup Poll](#) showed that the majority of Americans support legal abortion and oppose first trimester abortion bans such as heartbeat bills

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AMA citation

Arey W. Web Roundup: Abortion Bans, Heartbeat Bills, and the Future of Roe v. Wade. *Somatosphere*. 2019. Available at: <http://somatosphere.net/2019/web-roundup-abortion-bans-heartbeat-bills-and-the-future-of-roe-v-wade.html/>. Accessed June 28, 2019.

APA citation

Arey, Whitney. (2019). *Web Roundup: Abortion Bans, Heartbeat Bills, and the Future of Roe v. Wade*. Retrieved June 28, 2019, from Somatosphere Web site: <http://somatosphere.net/2019/web-roundup-abortion-bans-heartbeat-bills-and-the-future-of-roe-v-wade.html/>

Chicago citation

Arey, Whitney. 2019. Web Roundup: Abortion Bans, Heartbeat Bills, and the Future of Roe v. Wade. Somatosphere. <http://somatosphere.net/2019/web-roundup-abortion-bans-heartbeat-bills-and-the-future-of-roe-v-wade.html/> (accessed June 28, 2019).

Harvard citation

Arey, W 2019, *Web Roundup: Abortion Bans, Heartbeat Bills, and the Future of Roe v. Wade*, Somatosphere. Retrieved June 28, 2019, from <<http://somatosphere.net/2019/web-roundup-abortion-bans-heartbeat-bills-and-the-future-of-roe-v-wade.html/>>

MLA citation

Arey, Whitney. "Web Roundup: Abortion Bans, Heartbeat Bills, and the Future of Roe v. Wade." 28 Jun. 2019. *Somatosphere*. Accessed 28 Jun. 2019.<<http://somatosphere.net/2019/web-roundup-abortion-bans-heartbeat-bills-and-the-future-of-roe-v-wade.html/>>