

Issue: VA Abortion Policy

Trigger Laws and Abortion Policy in Virginia

Background

Donald Trump said in 2016 that if he appointed two or three pro-life Supreme Court judges, *Roe v. Wade*, the 1973 Supreme Court decision that protects abortion rights, would “automatically” be overturned.¹ Prior to 2016, the primary strategy of anti-abortion activists was to attack abortion rights on a state level in a multi-pronged approach. The Guttmacher Institute lists these strategies²:

- Ban pre- or post-viability abortions in violation of constitutional protections
- Require in-person abortion counseling followed by a waiting period before the procedure (requiring at least two trips to the clinic)
- Restrict Medicaid coverage for abortion
- Prohibit the use of telemedicine to provide medication abortion
- Limit access to abortion for those less than 18 years of age without parental consent
- Impose unnecessary and onerous regulations on abortion clinics and medical providers

In 2018, after the Senate confirmation of Brett Kavanaugh, the balance of the Supreme Court shifted towards a conservative pro-life stance³. Anti-abortion proponents have become emboldened to propose unconstitutional laws in direct opposition to *Roe v. Wade*. These laws include the “heartbeat law” that bans all abortions after six weeks gestation, essentially before many women know they are pregnant⁴. Direct attacks on *Roe v. Wade* are intended to eventually reach the Supreme Court.

Virginia is among the states with highly restrictive abortion laws including those in effect as of May 1, 2018⁵:

- Most women must receive state-directed counseling that includes information designed to discourage her from having an abortion, and then must wait 24 hours before the procedure is provided.
- A woman must undergo an ultrasound at least 24 hours before obtaining an abortion; the provider must offer her the option to view the image.
- Health plans offered in the state’s health exchange under the Affordable Care Act can only cover abortion if the woman’s life is endangered, or in cases of rape or incest.
- Abortion is covered in insurance policies for public employees only in cases of life endangerment, rape, incest or fetal impairment.
- The parent of a minor must consent and be notified before an abortion is provided.
- Public funding is available for abortion only in cases of life endangerment, rape, incest or fetal impairment.

What are Trigger Laws?

All of the strategies previously listed for legal and legislative attacks on abortion rights can lead to expensive and lengthy court battles when challenged by reproductive rights advocates. Trigger laws bypass such potential legal conflict by not challenging *Roe v. Wade*, but by putting in place an immediate and automatic ban on abortion should *Roe v. Wade* be overturned. These are designed in essence to ‘pull the trigger’ to enact anti-abortion legislation at the earliest possible time, thus preempting any pro-choice measures that might be considered in *Roe*’s stead.

Six states have enacted trigger laws thus far (North Dakota, South Dakota, Louisiana, Kentucky, Arkansas, and Mississippi), and seven states have proposals for trigger laws. Virginia currently does not have a trigger law or a proposed trigger law. Conversely, Virginia does not have any anti-trigger

laws in effect such as that recently passed in New York and in other states where the right to an abortion is protected by explicit law or codified in the state constitution.⁶⁷

Virginia Abortion Laws

Compared to other states in the U.S., Virginia is considered to be hostile to abortion rights. During the past decade, conservative legislators in Virginia have proposed over 100 legislative and regulatory restrictions on abortion access. The current restrictions, which target low-income women, and are medically unnecessary include:

- Must be performed by licensed physician
- Must be performed in the hospital if second trimester
- A second physician must participate if abortion is at viability (24 weeks gestation)
- Prohibited in the third trimester except in cases of life or health endangerment
- Partial birth abortion banned
- Permitting public funding only in cases of life endangerment, rape, and incest with exceptions in cases of severe fetal anomaly
- Permitting refusal by individual providers and institutions to perform abortions

Recent Virginia Abortion Legislation

Even though the majority of Virginians polled believe abortion should be legal⁸, conservatives continue to use incendiary “infanticide” rhetoric and false scenarios to deny a woman’s right to body autonomy⁹. Most rural parts of the state have no abortion provider. In 2018 and 2019, nine bills were proposed in Virginia to remove restrictions on reproductive care. The most notable bill was the “Repeal Act” (proposed in different forms in 2017, 2018, and 2019), which would remove burdensome and medically unnecessary restrictions on abortion clinics and providers¹⁰. All nine bills died in committee. In 2019 pro-choice advocates in Virginia proposed the “Reproductive Freedom Act” which would codify on a state level the rights protected by *Roe v. Wade*. This bill, which is essential to maintain reproductive rights protection, also died in committee.

The table below shows a sampling of legislation representing the competing priorities of the Republican and Democratic parties within Virginia concerning abortion and reproductive rights. With both legislative chambers in Virginia held by Republicans, progressive legislation sponsored by Democrats is killed in committee more often than not. It is time that the public becomes aware of their representatives’ legislative priorities, so they can truly vote as an educated electorate.

Year	Topic	Bill	Synopsis	Party of Sponsor	Vote (if any) and Status
Abortion and Reproductive Rights					
2019	Abortion and Reproductive Rights	HB 2207	This measure would have prohibited health insurance companies from imposing any copayment or fee for contraception. https://www.plannedparenthoodaction.org/planned-parenthood-advocates-virginia-inc/fight-back-resources/2019-bill-tracker	Dem	Died in committee

2019	Abortion and Reproductive Rights	SB 1132/ HB 2373	<p>The Reproductive Health Equity Act would have expanded ACA provisions for no-copay insurance coverage to include a broader host of reproductive health care services</p> <p>https://naralva.org/2019-legislative-session/</p>	Dem	Died in committee
2019	Abortion and Reproductive Rights	SB 1637/ HB 2369	<p>The Reproductive Freedom Act would have established the fundamental right to choose or refuse contraception, and the right to carry a pregnancy to term or to terminate the pregnancy.</p> <p>https://naralva.org/2019-legislative-session/ https://www.plannedparenthoodaction.org/planned-parenthood-advocates-virginia-inc/fight-back-resources/2019-bill-tracker</p>	Dem	Died in committee
2019	Abortion and Reproductive Rights	HB 2491	<p>Would have eliminated the requirement that an abortion in the second trimester of pregnancy and prior to the third trimester be performed in a hospital.</p> <p>The bill would have eliminated all procedures, such as ultrasounds, required to affect a woman's informed written consent to the performance of an abortion. However, the bill would not have changed the requirement that a woman's informed written consent be first obtained. The bill would have eliminated the requirement that two other physicians certify that a third trimester abortion is necessary to prevent the woman's death or impairment of her mental or physical health.</p> <p>The bill would have removed language classifying facilities that perform five or more first-trimester abortions per month as hospitals for the purpose of complying with regulations establishing minimum standards for hospitals.</p> <p>https://lis.virginia.gov/cgi-bin/legp604.exe?191+sum+HB2491</p>	Dem	Died in committee
2018	Abortion and Reproductive Rights	SB 133 / HB 450	<p>The Restoring Dignity to Informed Consent bill would have removed written informed consent and mandatory ultrasound requirements for people seeking an abortion, both of which are medically unnecessary.</p> <p>https://naralva.org/laws-policy/2018-legislative-scorecard</p>	Dem	Died in committee

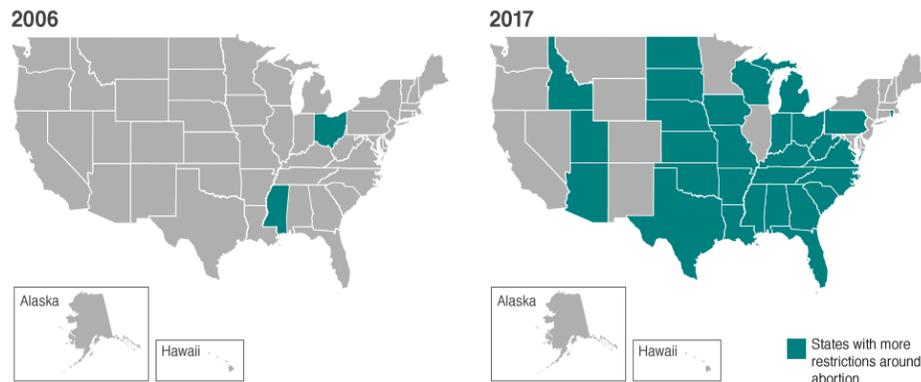
2019 2018	Abortion and Reproductive Rights	SB 1451/ HB 2491 (2019) SB 201 (2018)	Would have repealed unconstitutional, medically-unnecessary Targeted Regulation of Abortion providers (TRAP) laws that currently require abortion providers' medical offices to be classified as a type of hospital. https://naralva.org/laws-policy/2018-legislative-scorecard/ https://naralva.org/2019-legislative-session/	Dem	Died in committee
2018	Abortion and Reproductive Rights	SB 292	Would have removed the current requirement that a survivor of rape who is seeking abortion care through public insurance, such as Medicaid, must file a police report before accessing state funding. https://naralva.org/laws-policy/2018-legislative-scorecard/	Dem	Died in committee
2018	Abortion and Reproductive Rights	SB 910 / HB 1231	The Whole Woman's Health Act would have codified the legal precedent set by the U.S. Supreme Court in Whole Woman's Health v. Hellerstedt ensuring that any statute which places a substantial burden on a person's access to abortion without providing any medical benefit is unconstitutional. https://naralva.org/laws-policy/2018-legislative-scorecard/	Dem	Died in committee
2018	Abortion and Reproductive Rights	HB 21	Would have ensured that, regardless of what happens to the Affordable Care Act, preventive reproductive health care would continue to be fully covered by insurance in Virginia. https://naralva.org/laws-policy/2018-legislative-scorecard/	Dem	Died in committee
2018	Abortion and Reproductive Rights	HB 1037	Would have eliminated the current requirement for two additional physicians to certify a third trimester abortion in cases where the health or life of a pregnant woman is at risk. https://naralva.org/laws-policy/2018-legislative-scorecard/	Dem	Died in committee
2018	Abortion and Reproductive Rights	HB 1481	The Health Insurance Coverage for Contraceptives bill would have incorporated the federal contraceptive coverage mandates under the Affordable Care Act into Virginia law. This law would have protected Virginians' access to birth control from attacks at the federal level. https://naralva.org/laws-policy/2018-legislative-scorecard/	Dem	Died in committee

The Past Can be A Prelude

Reproductive rights have been targeted by conservative anti-choice campaign contributions, particularly over the last decade.¹¹ Not surprisingly, there has been a dramatic increase in the number of restrictive abortion laws during that same time but this has *not* always been the case.¹²

Tougher regulations on abortions

29 states have introduced restrictive legislation over the last decade



*Alaska and Hawaii not to scale

Source: Guttmacher Institute, 2018; BBC

BBC

How Can We Protect Reproductive Rights?

If *Roe v. Wade* is overturned, abortion will still be protected in states that have affirmed the right to abortion in their state constitution. There are currently nine states with state constitutional protections (New Mexico, New Jersey, Montana, Minnesota, Massachusetts, Alaska, California, Iowa, and Florida) as interpreted by that state’s highest court. Another nine states have statutory protection, which was attempted in Virginia with the failed “Reproductive Freedom Act” but these are not as secure as constitutional protection.

In addition to continuing the fight for constitutional protection, additional legislative actions that can be implemented on a state level to support abortion choice include¹³:

- Establish a legal standard that protects access to abortion
- Guarantee abortion coverage through Medicaid
- Allow advanced practitioners (nurse midwives, nurse practitioners, and physician’s assistants) to provide abortion by law or Attorney General opinion
- Mandate that private health insurance plans cover abortion
- Protect access to abortion clinics

¹ <https://www.usatoday.com/story/news/nation-now/2016/10/20/roe-v-wade-abortion-clinton-trump-debate-womens-issues/92452822/>

² <https://www.guttmacher.org/article/2018/12/state-abortion-policy-landscape-hostile-supportive>

³ <https://www.reproductiverights.org/what-if-roe-fell>

⁴ <https://www.economist.com/democracy-in-america/2019/03/27/why-red-states-are-passing-laws-banning-early-abortions>

⁵ https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-virginia?gclid=EAIaIQobChMlZLO1q2Z4gIVJRh9ChllQwmpEAMYASAAEgKGYvD_BwE

⁶ <https://www.cbsnews.com/news/roe-vs-wade-trigger-laws-in-these-states-would-make-abortion-illegal-if-roe-is-overturned-2019-02-21/>

⁷ <https://www.reproductiverights.org/project/using-state-constitutions-to-protect-reproductive-rights>

⁸ <https://www.pewforum.org/religious-landscape-study/compare/views-about-abortion/by/state/>

⁹ https://www.washingtonpost.com/local/virginia-politics/poll-majority-of-virginians-say-third-trimester-abortion-should-be-legal-if-womans-health-is-at-risk/2019/02/15/lbc25fda-3077-11e9-86ab-5d02109aeb01_story.html?noredirect=on&utm_term=.0ald4db185f8

¹⁰ https://www.washingtonpost.com/opinions/localopinions/virginias-abortion-fight-shows-how-conservatives-will-weaponize-reproductive-rights-in-2020/2019/02/22/44d93ec6-353a-11e9-af5b-b51b7ff322e9_story.html?utm_term=.60a5d11820c9

¹¹ <https://www.opensecrets.org/industries/indus.php?ind=Q14>

¹² <https://www.bbc.com/news/world-us-canada-43966855>

¹³ <https://www.guttmacher.org/article/2018/12/state-abortion-policy-landscape-hostile-supportive>

Additional Sources:

<https://www.reproductiverights.org/what-if-roe-fell>

<https://www.guttmacher.org/article/2018/12/state-abortion-policy-landscape-hostile-supportive>

<https://www.economist.com/democracy-in-america/2019/03/27/why-red-states-are-passing-laws-banning-early-abortions>

<http://time.com/5325124/justice-anthony-kennedy-supreme-court-roe-v-wade-overturned/>

<https://www.nbcnews.com/think/opinion/trump-s-anti-abortion-agenda-emboldened-all-out-war-women-ncna994661>

<https://www.cbsnews.com/news/new-abortion-law-abortion-clinic-automatically-illegal-roe-v-wade-overturned-2019-04-22/>

https://www.washingtonpost.com/opinions/localopinions/virginias-abortion-fight-shows-how-conservatives-will-weaponize-reproductive-rights-in-2020/2019/02/22/44d93ec6-353a-11e9-af5b-b51b7ff322e9_story.html?utm_term=.60a5d11820c9

The Economist. “Why Donald Trump will make abortion a big issue in the run-up to 2020.”

Economist.com. <https://www.economist.com/democracy-in-america/2019/02/07/why-donald-trump-will-make-abortion-a-big-issue-in-the-run-up-to-2020> (accessed April 29, 2019)