

the defender

FALL 2023



ABORTION RIGHTS: THE BIG ONE



IT'S BEEN JUST OVER A YEAR SINCE THE U.S. SUPREME COURT UPENDED 50 YEARS OF PRECEDENT WITH ITS DISASTROUS DOBBS RULING, PUTTING REPRODUCTIVE FREEDOM IN JEOPARDY NATIONWIDE.

The fundamental right to access abortion—which an estimated 1 in 4 women have exercised—is now more dependent than ever on one's zip code and economic resources and the predispositions of state politicians. This is shameful.

Here in Iowa, for now, abortion remains legal, up to about 22 weeks. However, the challenges to Iowans' ability to access reproductive health care continue.

And too many at the statehouse have been too clear in their intentions to severely restrict—if not ban—abortion altogether. [See page 4 for details.]

It's easy to be distressed by how far these rights, which we took for granted for so long, have diminished. The ongoing threats are real, and the likely impacts of further restricting abortion are devastating.

But we are not deterred. Along with our partners, Planned Parenthood and other reproductive freedom advocates, we have been fighting attacks on abortion access for decades. And we certainly won't be stopping now.

In fact, these are the very battles that the ACLU was created to fight. And because of the generosity of our supporters, we can employ our integrated advocacy approach—legal, legislative and policy, advocacy, public education, and media outreach—to protect abortion rights on nearly every front.

Our advocacy team is educating and building an impressive statewide network of volunteers in our reproductive rights education campaign.

In just 18 months, we've already assembled an action team of 7,500 advocates, with a goal of recruiting thousands more before November 2024. That's the likely date that Iowans will vote on a constitutional amendment that would declare that the right to an abortion is not protected by the Iowa Constitution.

This effort to amend the Iowa Constitution is different and even more dangerous than previous tactics. It is one of the most extreme attacks on women's health in Iowa history and it would

A NEW TACTIC
“This effort to amend the Iowa Constitution is different and even more dangerous.”

undermine the legal precedents that have been the foundation of our abortion rights victories in court.

So consider adding your name to that team of thousands and

showing up in the ways that you can [see page 7]. This is not the time to allow the anti-abortion folks to turn the clock back further than they already have.

Polls make it clear that public opinion increasingly is with us. In March, a Des Moines Register Iowa Poll found that 61 percent of Iowans support the right to an abortion in most or all cases. That's a steady rise since a 2008 Iowa Poll first asked the question and just 48 percent supported abortion in most or all cases.

We've come a long way, but we all know there is further to go. We won't give up and we know you won't either. Too much is at stake.

MARK STRINGER
ACLU of Iowa
Executive Director

ACLU
AMERICAN CIVIL LIBERTIES UNION
Iowa

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OPEN RECORDS WIN FOR JOURNALISTS

Gov. Kim Reynolds is not above the law, the Iowa Supreme Court rules for journalists.

Gov. Reynolds and her office cannot simply ignore requests from the media for public records.

It's unconscionable that we had to go to the courts to establish that. But we did so on behalf of our six journalist and media clients, resulting in a victory in April from the Iowa Supreme Court and setting important precedent moving forward.

REPEAT REQUESTS

Our clients, starting as early as April 2020, repeatedly and persistently sought records regarding the COVID pandemic and other matters of public interest. For months and in some cases, well over a year and a half, the journalists heard nothing back. In many instances, they didn't even get an acknowledgment of the requests.

It's crucial for our democracy that journalists can access public records in a timely manner and report on state

government so that we the people can understand and engage with our elected officials.

PAYING \$135,000 IN COSTS

After we filed the lawsuit, the Governor's Office turned over the public records our clients had sought. They also agreed to settle the case favorably, including:

- Undergoing a one-year period of judicial oversight to make sure it continues to comply with Iowa's Open Records Act.
- Paying \$135,000 in legal fees and costs that were incurred during the year-and-a-half legal battle.

Working for government transparency is fundamental to what the ACLU does. We appreciate our six clients—Clark Kauffman and The Iowa Capital Dispatch, Randy Evans and the Iowa Freedom of Information Council, and Laura Belin and Bleeding Heartland—for fighting right there alongside us.



Why I Give

With all the legislative changes this year, I've been grateful to have current, **clear-cut information** from the ACLU about reproductive justice. And when our rights are threatened, I also know the ACLU has the **legal expertise** and determination to fight for us.

KATIE STYRT
Davenport

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RIGHTS at RISK

KEEPING ABORTION LEGAL IN IOWA

THE OPTION OF AN ABORTION IS CRUCIAL FOR IOWANS TO CONTROL THEIR BODIES AND THEREFORE THEIR LIVES, BUT IT'S UNDER INCREASED ATTACKS FROM MULTIPLE DIRECTIONS.

Waiting periods. The threat of a state constitutional amendment. Cutting back on the time period in which a woman can get an abortion. And now Iowa women—and mere girls—are facing a nearly complete ban on abortion, at just six weeks.

To be clear, as of this writing, abortion in Iowa remains

legal up until about 22 weeks. But in this post-Roe world, we face the very real possibility that the ability of women to control their bodies and to thrive in the world could be set back by a half century.

Six-Week Abortion Ban

The latest and most imminent threat is

from a new six-week abortion ban, signed by Gov. Kim Reynolds in July. It bans nearly all abortions (with some very limited exceptions for sexual assault, incest, and the life of the woman) as soon as any cardiac impulses are detected in the embryo. That's usually around six weeks after a last menstrual period, or just about two weeks

after a first missed period.

The formal name of the legislation is the “fetal heartbeat” bill, but that’s just a deceptive marketing ploy, since at that stage it’s not a fetus—it’s an embryo—and it’s not a heartbeat—it’s just the beginning of electrical impulses in cells that would eventually develop into a heart.

Six-Week Ban Blocked Temporarily

Fortunately, the ACLU, representing Planned Parenthood and joined by the Emma Goldman Clinic, was able to

file a lawsuit even before Gov. Reynolds signed the bill into law on Friday, July 14.

The law went into immediate effect upon her signing it, but the following Monday, the district court put a temporary block on the law.

Still, for three days it was frightening and disruptive to have virtually all abortion banned in Iowa.

Meanwhile, before Gov. Reynolds signed the law, abortion providers worked diligently and overtime to do their best to get girls and women the abortion care they so desperately needed.

IOWA ABORTION RIGHTS TIMELINE

PRIOR TO **1973**

ABORTION IN IOWA IS NOT LEGAL

except in cases where the woman’s life is in danger. Enforcement varies, especially for women with more money. Many illegal abortions are performed.

1973-1990s

FEW CHANGES

Abortion in Iowa is legal with relatively broad access to abortion services.

2017

72-HOUR WAITING PERIOD LAW PASSED

This law would delay an abortion in Iowa by weeks. We sue and block it. Importantly, the Iowa Supreme Court finds that abortion is a “fundamental right” and subject to “strict scrutiny” under the Iowa Constitution.

1973

ROE V. WADE DECISION

The landmark Supreme Court ruling in *Roe v. Wade* establishes a woman’s constitutional right to access abortion. This decision applies to all states, including Iowa.

2013

TELEMEDICINE ABORTION BAN

Even though it’s very safe, the Iowa Board of Medicine tries to ban the use of telemedicine abortion, where doctors administer abortion medication remotely. Fortunately, courts block the ban.

2018

FIRST SIX-WEEK ABORTION BAN LAW PASSED

The legislature passes a mis-named “fetal heartbeat” law banning most abortions at around six weeks of pregnancy. We sue and eventually block it.

Legal Next Steps

In response to our successful temporary block on the abortion ban law, the State of Iowa filed an appeal.

There are several different legal paths and scenarios that can happen in this type of litigation, but it's nearly certain that the law will ultimately end up in front of the Iowa Supreme Court.

How Did We Get Here?

All of this is fallout from June 2022, when the U.S. Supreme Court overturned

its landmark *Roe v. Wade* decision.

Until *Roe* in 1973, abortion in the United States was highly restricted and varied from state to state. *Roe* determined that abortion access was an important constitutional right that must be assured to all women across the country, no matter what state they happened to live in.

Then came the U.S. Supreme Court's *Dobbs v. Jackson Women's Health Center* decision in June 2022. That overturned *Roe* and, among other things, returned decision-making about abortion restrictions back to the states.

The impact was immediate. Many states already had in place "trigger ban" laws, which were abortion ban laws they had passed months before the

REPRODUCTION GLOSSARY

Words matter. And they have been misused or misunderstood by many of those trying to block abortion rights, especially when the window for an abortion has been narrowed to a matter of a few weeks. Some key terms that are subject to misuse are:

CONCEPTION An imprecise term that some use to describe fertilization and others use to describe implantation.

EMERGENCY CONTRACEPTION Also called "the morning after" pill, Plan B, or another brand name. A pill given within 5 days after unprotected sex to delay or prevent ovulation so that the sperm cannot fertilize the egg. If an egg is already fertilized, it does not have an effect on that fertilized egg or prevent implantation.

FERTILIZATION When the sperm (which can remain active for several days) and egg join together. This happens within 24 hours of ovulation, the release of the egg. Fertilization is not yet pregnancy.

"FETAL HEARTBEAT" Misleadingly used to describe laws that would ban abortions at around six weeks. At that stage, it is neither a fetus (it's an embryo) nor does it have a heartbeat (it has the beginning of cardiac impulses). Also, most women don't know they're pregnant that early.

IMPLANTATION When the fertilized egg becomes implanted in the uterus. This can happen 6 to 12 days after ovulation and 2 to 3 weeks after fertilization.

MEDICATION ABORTION/THE ABORTION PILL Abortions induced by taking a pill or pills. In the U.S. nearly all medication abortions are a combination of mifepristone and misoprostol. Mifepristone, which is extremely safe and reliable, is under attack by anti-choice activists, but abortion providers could switch to using misoprostol only.

PREGNANCY Major medical associations do not recognize it as a pregnancy until the fertilized egg has been implanted into the uterus and the hormones needed to support pregnancy are released.

DES MOINES
REGISTER POLL

61%
OF IOWANS
SUPPORT
ABORTION IN
MOST OR ALL
CASES

2020

ABORTION CONSTITUTIONAL AMENDMENT

The Iowa Legislature starts the multi-year process to potentially change the Iowa Constitution to state that it does not protect any right to an abortion (see page 7).

2020

24-HOUR WAITING PERIOD LAW PASSED

Requires a 24-hour waiting period for those seeking an abortion, which in reality can delay an abortion by weeks. We sue and the law is temporarily blocked.

JUNE 6 2022

ROE V. WADE OVERTURNED BY THE U.S. SUPREME COURT

In a decision with vast implications, *Roe* is overturned in *Dobbs v. Jackson Women's Health*. Among other things, it turns abortion rights back to the states.

JUNE 16 2022

IOWA SUPREME COURT PERMITS 24-HOUR WAITING PERIOD LAW TO GO INTO EFFECT

Devastatingly, the Court also lessens the constitutional protection for abortion under the Iowa Constitution from "strict scrutiny" to "undue burden."

JUNE 6 2023

2018 SIX-WEEK ABORTION BAN LAW NOT REVIVED

Gov. Reynolds tried to resurrect this law. But the Iowa Supreme Court does not allow the long-blocked law to be reconsidered.

JULY 11 2023

SIX-WEEK ABORTION BAN 2.0

So in a special session, the legislature passes a new, nearly identical six-week abortion ban law. We sue and block the ban for now while litigation continues.

Dobbs decision so that if *Roe* was indeed overturned, abortion immediately would be banned or all but banned, depending on the nature of the trigger ban law.

Fortunately, Iowa did not have a trigger ban law in place. But after the *Dobbs* decision Iowa politicians wasted no time trying to ban abortion in Iowa. Their tactics were unusual legal maneuvers to try to revive an old six-week abortion ban passed back in 2018, which had been permanently blocked by the courts.

The attempt to revive the old law eventually ended up in front of the Iowa Supreme Court, which did not remove the permanent block on the old law.

As ACLU of Iowa Legal Director Rita Bettis Austin said, "This law was unconstitutional when it was passed back in 2018, and it's still unconstitutional today."

A Patchwork Of Laws

The longer-term result of *Dobbs* is that now there is a patchwork of abortion laws across the U.S. This creates confusion and makes it difficult if not impossible for a woman without money

or other resources to travel to get the abortion she needs.

Entire regions of the country have turned into abortion access deserts. In the South, for example, abortion is nearly impossible to obtain from Texas to West Virginia.

This especially hurts women who don't have money or a reliable car, can't take the time off work, can't find child care, or who have a violent partner they must deal with.

Six-Week Ban 2.0

Thwarted the first time, politicians passed a new six-week abortion ban in July 2023 that is almost identical to the 2018 version.

Both laws contain extremely limited exceptions for the life and physical health of the pregnant person throughout pregnancy. And both laws claim to provide so-called exceptions for certain survivors of rape and incest, those experiencing miscarriage, and those with particular fetal diagnoses.

Each exception in the law includes barriers to care, and the reality is that abortion would be largely unavailable for most vulnerable Iowans who would rely

How Much of a Right is an Abortion?

When discussing abortion law, a key element is how much protection the right to an abortion should be given by the courts.

Few constitutional rights are absolute, with no limits. Free speech, for example, is a considered crucially important constitutional right, but that doesn't mean that you can use that free speech to make a true threat to harm someone without any consequences.

So when state courts are asked to consider a restriction on abortion, there are at least three basic categories of protection that they may apply in deciding whether the restriction is constitutional or not.

STRONGEST PROTECTION: The Strict Scrutiny Standard This means that any law that restricts a right should be able to pass "strict scrutiny." When this standard is used, the state would have to show a court that it had a compelling need to restrict the constitutional right in question, and that the law does not restrict the right more than is necessary to meet that need.

MID-LEVEL PROTECTION: The Undue Burden Standard Abortion laws considered under this standard generally must not put a substantial obstacle on a person's ability to get an abortion prior to viability, which happens at around 24 weeks in pregnancy.

LITTLE PROTECTION: The Rational Basis Standard A lower, less stringent standard that a law must meet. In Iowa, that means that the state must have a "realistically conceivable" purpose for passing a law, which was based in fact, and the state must show that the law is rationally related to that purpose.

Many anti-choice advocates would like the standard in Iowa to be lowered from its current "undue burden" standard to this rational basis standard so that the state legislature can restrict abortion even more.

on these exceptions.

In cases where a patient's life is at risk, doctors would lack the legal certainty they need to immediately provide the best care to patients to avoid serious reproductive or pregnancy complications.

As we have seen in other states with similar so-called exceptions, the exceptions in Iowa are unworkable. They are hardly exceptions at all and put patients' lives at risk, and further deprive people of the right to choose when and if they give birth.

The bottom line is that by banning the vast majority of abortions, Iowa's latest six-week abortion ban violates Iowans' constitutional substantive due process, equal protection, and the inalienable right to abortion.

CURRENTLY, ABORTION IS LEGAL IN IOWA UP TO

22 WEEKS

AFTER THE FIRST DAY OF THE LAST PERIOD

EXCEPTIONS ARE ONLY IF THE WOMAN IS IN DANGER OF DEATH OR IF THERE IS A SERIOUS RISK OF "SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT OF A MAJOR BODILY FUNCTION."

25% OF IOWANS LIVE AT LEAST 50 MILES FROM WHERE THEY CAN GET A MEDICATION ABORTION.

44% OF IOWANS LIVE AT LEAST 50 MILES FROM WHERE THEY CAN GET A PROCEDURAL ABORTION.

1/3 OF THOSE SEEKING ABORTIONS DIDN'T PAY OR DELAYED BILLS IN ORDER TO AFFORD THEIR ABORTION.

MOST WOMEN SEEKING ABORTION HAVE

ONE CHILD

ARE UNMARRIED AND ARE LOW-INCOME, STUDIES SHOW.

79% OF ABORTIONS IN IOWA in Iowa are medication abortions

A Major Threat to Repro Rights

**WORDING OF THE
PROPOSED
AMENDMENT TO THE
IOWA CONSTITUTION**

A CONSTITUTIONAL AMENDMENT TO RESTRICT ABORTION

Anti-abortion rights politicians are laying the groundwork to completely ban abortion in Iowa.

Even though a majority of Iowans support abortion rights, lawmakers are advancing a proposed amendment to the Iowa Constitution that if passed by voters would strip away *all* abortion rights under our state constitution.

This amendment is the most serious threat to reproductive

freedom in Iowa in recent history. And that's saying something.

Some background: Abortion laws in Iowa are dictated, in part, by interpretations of both the U.S. Constitution and the Iowa Constitution. Iowa lawmakers must make laws that comply with both constitutions.

Currently, the Iowa Constitution provides some important protections for women seeking an abortion.

In 2017, the Iowa Supreme Court actually

strengthened that protection under the Iowa Constitution. But then in 2022, the Iowa Supreme Court then reversed itself, lowering that protection somewhat—but it did not take it away completely.

This amendment would take away those protections completely.

We must stop this effort to change the most fundamental legal document for our state that would pave the way for a complete abortion ban in Iowa.

“TO DEFEND THE DIGNITY OF ALL HUMAN LIFE AND PROTECT UNBORN CHILDREN FROM EFFORTS TO EXPAND ABORTION EVEN TO THE POINT OF BIRTH, WE THE PEOPLE OF THE STATE OF IOWA DECLARE THAT THIS CONSTITUTION DOES NOT RECOGNIZE, GRANT, OR SECURE A RIGHT TO ABORTION OR REQUIRE THE PUBLIC FUNDING OF ABORTION.”

TO AMEND THE IOWA CONSTITUTION THE AMENDMENT MUST GO THROUGH A THREE-STEP PROCESS

- 1»** It must pass a first time in the Iowa Legislature, and it did so in 2020.
- 2»** It must then pass the Iowa Legislature a second time during the next General Assembly (which is two annual legislative sessions). This means this anti-abortion constitutional amendment must pass again before the end of the 2024 session of the Iowa Legislature. We expect it to pass.
- 3»** Then the amendment goes to a public vote. We expect the abortion constitutional amendment to be on the November 2024 general ballot, though it could possibly be earlier.

**GET
INVOLVED!**

REPRODUCTIVE FREEDOM ACTION TEAM

The ACLU of Iowa team is building a network of reproductive rights volunteers to fight Iowa's abortion constitutional amendment and other threats to reproductive rights.

We currently have 7,500 volunteers, located in every single state legislative district and are working to add more.

Now we are partnering with those volunteers to build teams in target districts across the state. This infrastructure will help protect the constitutional right to an abortion in Iowa and fight further restrictions.

We cannot do this alone. Let us know you'd like to join this amazing team and we will connect with you! Go to www.aclu-ia.org/ReproRightsTeam or email outreach@aclu-ia.org for more information.



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ACLU MOMENT

February 23 1960

Fighting magazine censorship

In August 1959, Iowa Attorney General Norman Erbe, using what he said was his personal "common sense," determined that dozens of periodicals were obscene and must be removed immediately from Iowa newsstands and stores.

He also sent a letter to Iowa's county attorneys that flagged the names of those periodicals for future scrutiny and potential prosecution under Iowa's criminal obscenity law.

In response, publishers filed a lawsuit and the Iowa ACLU filed an amicus brief, saying Erbe's second action was unconstitutional "prior restraint."

In February, an Iowa federal court said removing the materials and the letter did not constitute a prior restraint, citing evidence that stores had not removed the publications moving forward and that prosecutions were not brought.

However, the judge warned, in the future Erbe and the state could not ban magazines before they were published or it would indeed be pre-censorship and therefore unconstitutional.

The caveat was enough to eventually derail Erbe's campaign to impose his own standards on what Iowans should and should not read.



Erbe (center) in 1959 launched a campaign to rid Iowa stores of "pornographic" magazines. Publishers filed a lawsuit and the Iowa ACLU filed an amicus brief, saying part of his efforts were unconstitutional prior restraint, that is, pre-judging something as obscene and censoring it before publication.