



## Abortion Politics: State-by-State Fights To Watch in 2024

The pro-life movement appeared to win a significant legal victory when the United States Supreme Court ruled in *Dobbs v. Jackson Women's Health Organization* in May 2021, overruling its decision in *Roe v. Wade* (1973) which had made abortion a woman's constitutional right. In the 6-3 decision, the Court also overturned *Planned Parenthood of Southern Pennsylvania v. Casey* (1992), which had broadened the authority of states to regulate and restrict abortion provided that an undue burden could not be placed on women. In *Dobbs*, pro-life activists got what they wanted: denying a constitutional right to abortion and returning the issue to the voters and their representatives in each of the 50 states.

The pro-life celebration of *Dobbs* proved short-lived. The pro-life movement was not prepared for the *rapid mobilization of pro-abortion activists on the state level to promote constitutional amendments through statewide votes for what is in effect abortion on demand*. As of the writing of this Report, at least ten states appear likely to have measures on their November ballots making essentially unrestricted abortion a state constitutional right. The pro-abortion movements in these states are well funded and well organized.

The pro-abortion movement in these states has good cause to think victory is in their grasp. In 2022, pro-abortion activists placed measures on three state ballots that easily won voter approval: California, Michigan and Vermont. In addition, two pro-life ballot measures were rejected by voters. Especially disappointing was a 60 percent "no" vote in Kansas defeating a constitutional amendment that would have negated a court finding of a right to abortion in the state constitution's bill of rights. A similar ballot measure failed in Kentucky.

Then, in 2023, Ohio voters passed a broad state constitutional amendment in favor of abortion access. The Ohio vote was closer than the Kansas vote, 56 percent to 44 percent. The pro-abortion side focused on mobilization in Cincinnati, Columbus, Cleveland and Toledo, which

provided large enough margins to win. In all, \$428 million was spent on abortion ads in the 2022 midterms, and the vast majority of those ads were pro-abortion.<sup>1</sup>

Since *Dobbs*, most Republican-controlled states enacted restrictive abortion laws. Democrat-dominated states have responded to *Dobbs* by enacting laws or using executive orders to protect access to abortion. These legislative battles over abortion set the stage for the November 2024 election, which will determine who occupies the White House, Congressional seats and statewide offices.<sup>2</sup> The pro-abortion movement sees ballot measures as a means to advance abortion on demand as a constitutional right in a number of states. The pro-life movement, however, is divided on whether the better political strategy is to ban abortion outright, or to restrict it at a stage earlier than viability of the fetus. This division sometimes benefits the pro-abortion movement.

Below is a list of some of the *key states to watch as the abortion issue plays out in the 2024 election*. Space does not permit us to cover all the fast-evolving state campaigns.<sup>3</sup>

### Arizona

Arizona is a swing state for determining which party controls the White House, the Senate and the House. As we explained in the May 2024 *Mindszenty Report*, the abortion issue in this state was complicated by two conflicting pieces of legislation, one enacted in 1864 and a 2022 legislative act that bans abortion after 15 weeks of gestation.

In April the state supreme court ruled that the 1864 act was still on the books and therefore could be enforced.<sup>4</sup> In response, Democrats in the legislature, with support of 2 or 3 Republican legislators in each chamber, promptly repealed the 1864 law. The repeal bill was signed by the Democratic governor on May 2.<sup>5</sup>

The repeal of the 1864 law did not mean that the abortion issue was resolved. The pro-abortion movement in Arizona

is pushing a ballot initiative that would put abortion rights into the Arizona constitution. The wording for this initiative establishes a “fundamental right” to obtain an abortion any time before viability (typically 23 or 24 weeks of gestation). Even after viability, the act prevents the state from enacting or enforcing any law that denies, restricts or interferes with abortion that “in the good faith judgment of a treating health care professional, is necessary to protect the life or physical or mental health of the pregnant individual.”<sup>6</sup> Exactly who qualifies as a “treating health care professional” is not spelled out in the initiative.

*A “mental health” exception is of course very vague and effectively permits the possibility of abortions up to birth. Many of the proposed state constitutional amendments in other states contain a similar exception, in effect recreating the exception imposed by the U.S. Supreme Court in the companion case to *Roe v. Wade*—*Doe v. Bolton* (1973). Arizona voters presumably would compare this proposed very permissive ballot measure to the state statute banning abortion after 15 weeks. The measure has until early July to gather 383,000 voter signatures to qualify for the ballot.*

It Goes Too Far, a coalition of pro-life groups, and the Center for Arizona Policy Action, a political action committee for the pro-life think tank Center for Policy, are opposing the ballot initiative, but they face an uphill battle in their opposition. The pro-abortion movement under the umbrella Arizona for Abortion Access has momentum. Their message to keep government out of the bedroom has a natural appeal to voters who pride themselves on western individualism.

## Colorado

The Colorado ballot initiative would guarantee a right to legal abortion in the state. Currently, Colorado is one of the few states in the country that have no limits on when an abortion may be performed.

The initiative makes unrestricted abortion a constitutional right and repeals a 1984 constitutional provision that banned public money for abortions. Pro-life supporters admit that there is widespread support for abortion access in the state. On the other hand, it is estimated that three-fourths of Colorado voters oppose late-term abortion.<sup>7</sup>

## Florida

In early January, pro-abortion forces collected enough signatures to advance a 2024 ballot measure. Nearly 900,000 signatures were collected including at least 150,000 registered Republicans. The proposed

constitutional amendment seeks to bar restrictions on abortion before viability, considered to be about the 24<sup>th</sup> week of pregnancy. The amendment includes an exception past the 24<sup>th</sup> week for “the patient’s health, as determined by the patient’s healthcare provider.” Neither “health” nor is “healthcare provider” is carefully defined.

If passed, this amendment would overturn the state’s current 6-week ban. Pro-life groups challenged the amendment in the state supreme court, arguing that the amendment’s language was vague, but in April the court ruled that the amendment may appear on the ballot.<sup>8</sup>

Florida is a solid red state, but a number of state legislative races are up for grabs.

## Missouri

Deep red Missouri is not a battleground state. But the abortion issue has the potential to influence voting in 2024. The state was the first to pass a near-total ban on abortion after the *Dobbs* decision.<sup>9</sup> As a consequence, the state has the lowest state rate of abortion per 100,000 women between 15 and 44 years old. Missouri’s rate stands at 0.1, compared to the state with the highest rate, Illinois, at 20.8 and New York at 16.1.<sup>10</sup>

In late April 2024, the state pro-abortion movement submitted 380,000 signatures to place a constitutional amendment establishing abortion rights on the November ballot.<sup>11</sup> The major question for both parties is how this measure will affect voters in November. One survey showed that approximately 24 percent of state GOP voters favored abortion rights. This number, if held on Election Day, raises the question of down-ballot voting. Secretary of State Jay Ashcroft, a Republican candidate for governor, warns that abortion rights could affect some legislative contests in battleground suburban districts.<sup>12</sup>

## Montana

Democrats are pushing a state constitutional amendment to be placed on the November ballot to benefit Senator Jon Tester’s reelection bid. Tester is considered one of the most vulnerable Senate incumbents in 2024. Winning this seat is vital if Democrats are to hold the slightest of majorities in the Senate.

The proposed amendment has run into legal and political opposition, but in late April the state supreme court ruled that advocates for a constitutional amendment could begin collecting the more than 60,000 signatures necessary to put it on the November ballot. The measure is being supported

by Planned Parenthood of Montana, Planned Parenthood Advocates of Montana, the Montana ACLU and Forward Montana. Opponents of the measure claim that the wording for the initiative is vague and broad enough to allow abortion on demand.<sup>13</sup> Montana law already allows abortion until fetal viability.

## Nebraska

Nebraska is a deep red state, but has an unusual rule for presidential elections which awards 2 electoral votes to the winner of the state popular vote, and 3 electoral votes to winners of Nebraska's three congressional districts. In 2020, Biden won one electoral vote in the Lincoln district. In a close presidential race, every electoral vote matters.

Nebraska law currently allows abortion in the first trimester of pregnancy. Pro-abortion activists have launched a drive to put abortion rights up to fetal viability (and beyond) into the state constitution in the November election. In response, pro-life forces initiated a campaign to place on the ballot a measure to ban abortions after the first trimester, subject to narrow exceptions. By placing a second proposed amendment on the ballot, pro-life groups are using a different tactic in Nebraska compared with other states. Instead of organizing just to oppose the broad pro-abortion amendment, they are proposing their own constitutional amendment to limit abortion.<sup>14</sup>

## Nevada

Nevada has become a swing state in the presidential election. If Trump wins Arizona, Nevada and a large swing state such as Georgia, while keeping the states he won in 2020, he will win the election.

In late January 2024, a Nevada judge approved a petition by pro-abortion activists to gather signatures to place on the Nevada ballot a constitutional amendment allowing abortion up to 24 weeks. If it passes, voters would again vote on the amendment on the 2026 ballot. Abortion up to 24 weeks is already codified into Nevada law through a 1990 statewide vote. Nevada rules for amending the constitution require approval from two legislative sessions and an election, or two consecutive elections with a simple majority vote.

Democrats are hoping to boost Democratic turnout in Nevada by tapping into the abortion issue. The first step is to collect 103,000 signatures from registered voters by June 26.<sup>15</sup>

## Pennsylvania

Pennsylvania is not considered a swing state, but if the Democrats lose this state in the 2024 presidential election, they will likely lose the White House. The election of Democrat Dan McCaffery in late 2023 to an open seat on the state's supreme court offered abortion rights groups hope. In his expensive campaign, McCaffery focused on "reproductive rights." He told the Associated Press that reproductive rights "really caught fire on the campaign trail, and I think a lot of it had to do with the more recent decisions at the U.S. Supreme Court and the scandals at the U.S. Supreme Court."<sup>16</sup>

An abortion amendment is unlikely to appear on the 2024 ballot, leaving abortion available up to 24 weeks in state law. McCaffery's election, however, has ginned up Democrats to play the reproductive rights card nonetheless.

## Wisconsin

In January, state legislature Republicans called for a statewide referendum to limit abortion to no more than 14 weeks of gestation instead of 20 weeks, but it failed.<sup>17</sup> As a result, an abortion referendum will not appear on the 2024 ballot. Nevertheless, Democrats hope that this issue can turn out voters, especially the young. In a focus group hosted by NBC News, seven of the eight young Wisconsin voters said that abortion rights would be a major issue for them in 2024.<sup>18</sup>

Democrat hopes are well founded. In April 2023, liberals regained control of the Wisconsin supreme court with the election of Janet Protasiewicz, who prevailed in the state's highly contested election. Now, with a liberal majority on the court, some predict the court might find a way to broaden the right to abortion by relying on general provisions in the state constitution.<sup>19</sup> Both Vice President Harris and President Biden have appeared at campaign events in the state where they spoke in favor of abortion rights.

## Abortion and 2024

The pro-life movement has a clear fight on its hands. A Fox News poll in March 2024 shows a decided shift in voter opinion in favor of abortion rights. The majority of voters surveyed (59 percent) said they believe that abortion should be legal in most cases. This is up 2 percent from a poll conducted in 2022. In addition, two-thirds of voters supported national legislation guaranteeing the right to abortion. In April 2022, only 44 percent supported such legislation. Support for such legislation was

surprisingly high among older voters, including those identified as conservative, Republican, and white evangelicals.<sup>20</sup>

A further sign that should worry the pro-life movement is evident in voter opposition to restrictions on abortion. Nearly 60 percent of voters oppose a ban on abortion after 6 weeks, and 54 percent oppose a ban after 15 weeks while 38 percent support this restriction. Overall, Republican voters support both bans.

Voters are evenly split on a ban on abortion after 24 weeks (48% to 48%). This indicates deep opposition to late-term abortions.<sup>21</sup>

All this suggests that the pro-life movement has its work cut out for it in the 2024 election. *Abortion on demand will be on the ballot in many states. Pro-life activists need to hit hard, and keep hitting, on an issue that favors them—opposition to late-term abortions.* The proponents of “reproductive freedom” should be asked, again and again, if they favor abortion near the birth of a baby. Do they favor any limitation on destroying the life of a viable human being?

In addition, the pro-life movement needs to reach out to Hispanic and black voters. These populations experience the brunt of legalized abortion. Life is at stake.

<sup>1</sup>The abortion issue presented opportunities for Democratic candidates to mobilize votes. Between July and Election Day, Democratic candidates broadcasted 755,000 ads mentioning abortion, while Republicans broadcasted only 52,000 ads mentioning abortion. <http://9415819.hs-sites.com/adimpact-abortion-messaging-report>.

<sup>2</sup><https://apnews.com/article/abortion-ballot-amendment-ban-protection-states-2024-052ff9846f8416efb725240af22b92ec>.

<sup>3</sup>For a useful summary of state abortion laws and abortion proposals as of May, see <https://www.kff.org/womens-health-policy/dashboard/ballot-tracker-status-of-abortion-related-state-constitutional-amendment-measures/>.

<sup>4</sup><https://apnews.com/article/arizona-abortion-restrictions-1864-9c68866d69dca38c728dd27b80592e8f>.

<sup>5</sup><https://www.nbcnews.com/politics/arizona-supreme-court-ruling-abortion-ban-rcna146915>.

<sup>6</sup>Stacey Barchenger, “Opponents of Arizona Abortion Rights Initiative Campaign against ‘Extreme’ Proposal,” *Arizona Republic*, January 30, 2024. Also, Ximena Bustillo, “A Next Big Ballot Fight Over Abortion Could Come to Arizona,” *National Public Radio*, December 23, 2023.

<sup>7</sup><https://www.cpr.org/2024/01/08/colorado-abortion-protection-state-constitution-proposed-amendment/>.

<sup>8</sup><https://www.usnews.com/news/national-news/articles/2024-04-01/florida-supreme-court-oks-abortion-amendment-for-2024-ballot>.

<sup>9</sup><https://www.kcur.org/health/2023-06-26/a-year-since-the-dobbs-decision-missouri-abortion-ban-has-far-reaching-effects-on-health-care>.

<sup>10</sup>Under a Missouri law enacted in 2019, abortions are only permitted in cases of medical emergency to prevent the death of the pregnant mother or when a delay creates a serious risk of substantial or irreversible physical impairment of a major bodily function. Abortion providers can be found guilty of a class B felony and can incur up to 15 years in prison and the suspension of their medical license. <https://www.kff.org/womens-health-policy/state-indicator/abortion-rate/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

<sup>11</sup><https://www.kcur.org/politics-elections-and-government/2024-05-01/abortion-rights-missouri-election-2024-ballot-republicans>.

<sup>12</sup>Ibid.

<sup>13</sup><https://montanafreepress.org/2024/04/18/montana-republicans-vote-to-oppose-constitutional-abortion-rights-measure/>.

<sup>14</sup><https://nebraskaexaminer.com/2024/03/19/https-nebraskaexaminer-com-briefs-new-ballot-initiative-seeks-to-ban-nebraska-abortions-after-first-trimester-of-pregnancy/>.

<sup>15</sup><https://thenevadaindependent.com/article/reproductive-rights-group-seeks-second-initiative-to-protect-abortion-in-nv-constitution>.

<sup>16</sup><https://apnews.com/article/apnews/supreme-court-election-pennsylvania-2664b5f6b6914ef5eff2b2c3d573895a>.

<sup>17</sup><https://apnews.com/article/wisconsin-abortion-14-weeks-pregnancy-bill-f7ebe31fc87f11a05127ed1e5b5ee155>.

<sup>18</sup><https://www.nbcnews.com/meet-the-press/video/focus-group-wisconsin-young-voters-say-abortion-is-a-big-factor-in-2024-210150981811>.

<sup>19</sup><https://www.nytimes.com/2023/04/04/us/politics/wisconsin-supreme-court-protasiewicz.html>; <https://www.wpr.org/news/wisconsin-ag-hints-at-broader-abortion-lawsuit-if-state-supreme-court-agrees-to-hear-case>.

<sup>20</sup><https://www.foxnews.com/official-polls/fox-news-poll-record-number-say-abortion-should-be-legal>.

<sup>21</sup><https://sbaprolife.org/polling>.

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