

Bill proposed by Sen. Lindsey Graham would ban abortion at 15 weeks nationwide

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Sen. Lindsey Graham, Republican of South Carolina, introduced a bill on Tuesday that would ban most abortions after 15 weeks of pregnancy. The move follows the US Supreme Court's ruling in June in *Dobbs v. Jackson Women's Health Organization* that overturned the constitutional right to abortion.

The proposed legislation, the Protecting Pain-Capable Unborn Children from Late-Term Abortions Act, is aimed at enshrining in federal law the high court's reactionary ruling. It comes as Republican-controlled states continue to enact harsh restrictions on abortion rights in the wake of the *Dobbs* decision.

While it is unlikely that the bill will come to a vote in the Senate before the mid-term elections, this does not alter the right-wing Christian fundamentalist nature of the legislation and the warning it sends that far-right forces are determined to outlaw the democratic right to abortion in all 50 US states.

Minority leader Mitch McConnell, Republican of Kentucky, told reporters Tuesday that he felt the issue should be left up to the states and that most Republican members of Congress would agree with him.

Many Republican senators, including Ron Johnson of Wisconsin, Shelley Moore Capito of West Virginia and John Cornyn of Texas, have not backed Graham's bill. Both Cornyn and Johnson told CNN that the issue should be left to the states.

This has little to do with states' rights, or softening Republicans' opposition to abortion rights, but rather reflects crude political calculations on Republicans' part aimed at shoring up the party's fate in the upcoming mid-term elections. Polls show that support for abortion rights continues to increase, including among registered Republicans.

A recent Pew Research Center poll showed that 61 percent of US adults believe abortion should be legal in all or most cases. A May 2022 Gallup survey found that 50 percent of Americans say abortion should be legal in some circumstances, and 35 percent believe it should be legal in all circumstances, for a combined total of 85 percent.

Graham's bill makes a mockery of science, beginning with its title. The claim that the legislation would protect "Pain-Capable Unborn Children" is based on an interpretation of an embryo or fetus' ability to sense pain for which there is presently no consensus among neuroscientists.

There is agreement among scientists that nociceptors, or pain receptors, begin forming at about seven weeks gestational age, and that by about the 20th week, nociceptors are present throughout the fetal body. Nerves connecting these nociceptors to the thalamus, the region of the brain involved in pain implication, finish developing at around 20 weeks.

The text of Graham's bill states that "from as early as 12 weeks gestational age, and certainly by 15 weeks gestational age, the fetus is extremely sensitive to painful stimuli." But this assertion is based on an interpretation of "fetal pain" that requires measurement of a fetus' subjective feelings, which cannot be determined for obvious reasons.

Key to the bill's argument for banning abortion after 15 weeks of pregnancy is the contention that fetuses at this gestational age are "unborn children." According to the legislation, "The term 'unborn child' means an individual organism of the species homo sapiens, beginning at fertilization, until the point of being born alive..."

Graham's bill borrows from the 2007 decision in *Gonzales v. Carhart*, which upheld the Partial-Birth Abortion Act of 2003. "Partial-birth abortion" is not an acceptable medical term and is not used by abortion practitioners or the medical community at large. It refers to a surgical procedure performed after 21 weeks gestation that removes an intact fetus from the uterus.

According to the Centers for Disease Control and Prevention, only about 1.3 percent of abortions were performed at or greater than 21 weeks of gestation in 2015. The overwhelming majority of such procedures are carried out due to fetal unviability or when necessary to protect the mother's life or health. They are not undertaken lightly by either patient or doctor.

The majority opinion written by Justice Anthony Kennedy in *Gonzales v. Carhart* held that Congress' ban on "partial-birth abortion" did not impose an undue burden on the due process right of women to obtain an abortion. This ruling held that such an abortion is performed on "the fast-developing brain of her unborn child, a child assuming *the human form*" (emphasis added).

Citing *Gonzales v. Carhart*, the Graham legislation asserts: "The Supreme Court of the United States has acknowledged that, by at least 12 weeks gestation, an unborn child has taken on 'the human form' in all relevant aspects."

The words "Late-Term Abortions" in the Graham bill's title are also deliberately misleading. The legislation seeks a federal ban on abortions performed after the 15th week of pregnancy. With the first trimester encompassing weeks 1 through 12, and the second from week 13 to the end of week 26, week 15 can hardly be considered "late-term."

This misleading and anti-scientific terminology is aimed at obscuring the fact that anti-abortion forces in the far-right's orbit seek the federal outlawing of *all* abortions, with minimal if any exceptions.

The Graham legislation sets forth minimum requirements for abortion providers, including making an assessment of the age of the "unborn child," that a physician trained in neonatal resuscitation be present for an abortion, and that documentation be provided that rape or incest was reported to a government agency. Any provider who performs an abortion in violation of these and other stringent requirements is subject to a fine, imprisonment of not more than 5 years, or both.

The Biden administration, while expressing mild disappointment over the *Roe* decision, has long capitulated to the right-wing religious zealots behind the assault on abortion rights exemplified by the Graham legislation.

With the overturning of *Roe v. Wade*, nearly one-third of American women of childbearing age, around 21 million, immediately lost access to abortion.

- Indiana was the first state to draft and pass a full ban on abortion after the overturning of *Roe*. On Thursday, a ban on nearly all abortions took effect in the state.

- West Virginia's governor signed a bill on Friday banning nearly all abortions, with immediate effect.

- Abortion is banned in Oklahoma at the point of fertilization.

- Alabama, Arkansas, Kentucky, Indiana, Idaho, Louisiana, Missouri, South Dakota, Tennessee and Texas now ban abortion with no exceptions for rape or incest.

- Mississippi bans abortion with exceptions for rape and incest.

- In Georgia, abortion is banned after six weeks of pregnancy.

- Abortion is banned after 15 weeks of pregnancy in Florida and Arizona, after 18 weeks in Utah, after 20 weeks in North Carolina and after 22 weeks in Iowa.

In cases where a state's abortion law is more restrictive than the 15-week ban in Graham's bill, the state's ban would take precedence. In states where the law is less restrictive, federal law would overrule the state's law.

As the *World Socialist Web Site* wrote at the time of the Supreme Court's striking down of *Roe v. Wade* and the constitutional right to abortion:

The decision is the opening salvo in an historically unprecedented attack by the ruling class on all democratic rights. The concurring opinion by Clarence Thomas announces that the court will now begin to revisit all prior cases in which the Supreme Court protected the substantive due process rights of the population. "In future cases," Thomas wrote, "we should reconsider all of this Court's substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*." These decisions, respectively, protected the right to contraceptives, overturned laws criminalizing sodomy, and legalized same-sex marriage.

Though these decisions are first on the chopping block, [Justice Clarence] Thomas' concurrence makes clear they are just the starting point.

Democratic rights under threat include the banning of school segregation, the right to free criminal defense counsel, laws banning interracial marriage, laws upholding minimum wage and child labor restrictions and more.

The Democratic Party has not mobilized in defense of the constitutional right to abortion any more than they have exposed the threat of fascistic forms of rule demonstrated in the January 6, 2021, assault on the Capitol and held those responsible accountable.

The *Dobbs* decision, state moves to ban abortion and Graham's proposed anti-abortion bill demonstrate that the defense of basic democratic rights today is entirely dependent on the development of a mass movement of the working class, independent of the big-business, two-party system.



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