



## Ohio Governor Vetoes Bill Banning Abortions if Fetal Heartbeat Is Detectable

On December 13, Ohio Governor John Kasich (shown) vetoed the Heartbeat Bill, which would have banned abortion once a fetal heartbeat can be detected. Kasich's veto was of the "line-item" type and was accomplished by means of "veto messages" that disapproved of two items contained in Amended Substitute House Bill 493. The "heartbeat bill" — as the abortion ban was commonly called — was part of Item Number 1.



In his message, Kasich offered the following explanation for vetoing that portion of the appropriation bill:

As governor I have worked hard to strengthen Ohio's protections for the sanctity of human life, and I have deep respect for my fellow members of the pro-life community and their ongoing efforts in defense of unborn life. Certain provisions that were amended into Am. Sub. HB 493, however, are clearly contrary to the Supreme Court of the United States' current rulings on abortion.

Similar legislation enacted in two other states has twice been declared unconstitutional by federal judges, and the Supreme Court declined to review those decisions. Because the federal courts are bound to follow the Supreme Court's ruling on abortion, the amendment to Am. Sub. HB 493 will be struck down. The State of Ohio will be the losing party in that lawsuit and, as the losing party, the State of Ohio will be forced to pay hundreds of thousands of taxpayer dollars to cover the legal fees for the pro-choice activists' lawyers. Furthermore, such a defeat invites additional challenges to Ohio's strong legal protections for unborn life. Therefore, this veto is in the public interest.

The two similar laws passed by other states that Kasich referred to were passed by North Dakota and Arkansas in 2013, but struck down by separate rulings by the 8th U.S. Circuit Court of Appeals in 2014 and 2015.

Both states' attempts to appeal the decisions to the Supreme Court were rejected in January, when the high court declined to review the cases.

However, Kasich's decision to veto the item containing the "heartbeat" provision might be described as both pragmatic and fatalistic. It was pragmatic because he indicated that part of his rationale for the veto is that an unsuccessful lawsuit might cost "hundreds of thousands of taxpayer dollars." By so stating, Kasich put a price tag on human life. How much is a human life worth? If the lives of thousands of unborn babies might have been saved by the legislation, then an arbitrary price of a hundred dollars per life might be considered a bargain by many pro-life activists.

Kasich's emphatic presumption that "Am. Sub. HB 493 will be struck down" (not *might* be struck down, but *will* be struck down) is a sort of fatalistic pessimism that — if allowed to metastasize— might doom the entire pro-life movement. Pro-life legislation, from the time of *Roe v Wade* in 1973, has more often



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than not been struck down by federal judges. However, the difference between victory and defeat in the history of warfare is that those who are ultimately victorious has picked themselves up after each defeat and gone on to win. As Theodore Roosevelt once said:

Far better it is to dare mighty things, to win glorious triumphs, even though checkered by failure, than to take rank with those poor spirits who neither enjoy much nor suffer much, because they live in the gray twilight that knows neither victory nor defeat.

The Ohio legislators who added the heartbeat language to the appropriations bill were not naïve. They knew there was a chance that a federal judge might find the legislation unconstitutional. But they knew that there was also a chance that the bill might pass constitutional muster. Judges are unpredictable. Considering this, the pro-life legislators thought it was worth their while to seek victory, rather than run up a white flag in anticipation of defeat. When Ohio Senate President Keith Faber was asked by the *Columbus Dispatch* why the “heartbeat” measure was quickly and unexpectedly passed, despite opposition from Democrats in the legislature, he said:

A new president, new Supreme Court appointees change the dynamic, and there was consensus in our caucus to move forward.

I think it has a better chance [to received favorable constitutional review by the courts] than it did before.

The *Dispatch* reported that the Heartbeat Bill had passed the Senate by a veto-proof margin (21-10), but it did not do so in the House (56-39). Therefore three-fifths of lawmakers in the House (60) would have to vote to override a veto. If votes remained the same as the initial vote, there is insufficient support to override the governor’s veto.

Janet Porter, head of the conservative Christian group Faith2Action, which had lobbied for a Heartbeat Bill for years, said after the veto: “It’s not over. We are two votes away [in the House] from overriding Gov. Kasich’s betrayal of life.” Porter said she believes two legislators not present for last week’s vote would now vote to override Kasich’s veto, so she will be looking for two more votes in the House.

On the same day he vetoed the heartbeat portion of the appropriations bill, Kasich signed into law a second bill (SB 127) banning abortions after 20 weeks of pregnancy.

“I agree with Ohio Right to Life and other leading, pro-life advocates that SB 127 is the best, most legally sound and sustainable approach to protecting the sanctity of human life,” Kasich said in a statement. He described himself as working hard “to strengthen Ohio’s protections for the sanctity of human life.”

In a statement quoted by the *Dispatch*, Ohio Right to Life President Michael Gonidakis supported Kasich’s decision to veto the Heartbeat Bill, which the group opposed.

“The 20-week ban was nationally designed to be the vehicle to end abortion in America. It challenges the current national abortion standard and properly moves the legal needle from viability to the baby’s ability to feel pain,” he said.

“Given the current make-up of the United States Supreme Court, Governor Kasich got it right by embracing the strategic incremental approach to ending abortion,” Gonidakis said.

Senate Bill 127 specifically forbids termination of “a human pregnancy of a pain-capable unborn child.” The fact that it is an improvement over current Ohio state law, which forbids abortions after 24 weeks, probably explains the group’s support for it. However, a more zealous pro-life supporter might consider



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this strategy to be similar to a football play that opts for an easy field goal instead of attempting a more difficult touchdown.

In its coverage of Kasich's action, Lifenews.com, a leading pro-life website, put the governor's signing of the 20-week bill in bright lights in the headline, and mentioned his veto of the heartbeat bill in the article in language that accepted his reasoning without challenge.

After quoting from Kasich's statement linking his veto to a similar position from Ohio Right to Life," the LifeNews report said:

Because the heartbeat-based abortion ban will not likely survive a legal challenge in court, pro-life legislators approved the 20-week abortion ban with the hope of saving as many babies as possible under *Roe v. Wade*.

The pro-life group Ohio Right to Life thanked Kasich for signing the 20-week ban — saying it would save hundreds of babies from abortions.

The article went on to quote Ohio Right to Life's effusive praise of Kasich's decision to sign the easier bill and veto the more difficult one. Part of the quote stated:

Ohio Right to Life supports Governor Kasich's decision to bypass the heartbeat legislative approach at this time. While it must have been difficult, the current make-up of a radically pro-abortion Supreme Court required the Governor to exercise great restraint. Further, filling the current vacancy on the Court by our next President will still leave the court with a pro-abortion majority....

By endorsing the 20-week ban in lieu of the heartbeat approach, Governor Kasich provided strong pro-life leadership to finally engage a winnable battle with the federal judiciary while saving countless babies at the same time.

As noted above, not all pro-lifers agree with Ohio Right to Life, including Janet Porter, head of Faith2Action, who called the veto "Gov. Kasich's betrayal of life."

*Photo: Ohio Governor John Kasich*

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