



Written by [Dave Bohon](#) on March 4, 2013

Ark. Legislature Overrides Governor's Veto of 20th-Week Abortion Ban

On February 27 the Arkansas state legislature overrode a veto by Governor Mike Beebe of HB 1037, the [Pain-Capable Unborn Child Protection Act](#), which will prohibit most abortions after the 20th week of pregnancy. Following the veto, which Beebe said came because the law contradicts the Supreme Court's *Roe v. Wade* decision, the legislature quickly enacted the override, with the House voting by a wide 53 to 28 margin, followed by a much closer 19 to 14 Senate vote. With passage of the bill, Arkansas became the eighth state to ban abortion after 20th week of pregnancy, except for rape, incest, and to save the life of the mother.



"The Arkansas Legislature has voted to end the killing of unborn children at an age when they are capable of experiencing excruciating pain at the hands of abortionists," said Rose Mimms, director of Arkansas Right to Life, which lobbied extensively for the bill. "In a clear, unmistakable voice, first the House, then the Senate objected to Gov. Beebe's support of elective, non-therapeutic abortion at any time for any reason using any method — even when the human sensation of pain is at its greatest level — in procedures that pull their tiny body apart limb by limb." Mimms noted that medical evidence has established that the [unborn can feel pain by at least the 20th week](#).

In an open letter explaining his veto of the 20th-week bill, Gov. Beebe wrote that "because it would impose a ban on a woman's right to choose an elective, non-therapeutic abortion before viability, House Bill 1037, if it became law, would squarely contradict Supreme Court precedent. When I was sworn in as Governor, I took an oath to preserve, protect, and defend both the Arkansas Constitution and the Constitution of the United States. I take that oath seriously."

Beebe also expressed his concern over lawsuits the state might face against the law, noting that "the adoption of unconstitutional laws can be very costly to the taxpayers of our State. Lawsuits challenging unconstitutional laws also result in the losing party — in this case, the State — having to pay the costs and attorneys' fees incurred by the litigants who successfully challenge the law. Those costs and fees can be significant."

Recalled Beebe:

In the last case in which the constitutionality of an Arkansas abortion statute was challenged, *Little Rock Family Planning Services v. Jegley* (1999), the state was ordered to pay the prevailing plaintiffs and their attorneys nearly \$119,000 for work in the trial court, and an additional \$28,900 for work on the state's unsuccessful appeal.

The veto override followed party lines, with Democrats who had voted for the 20th-week abortion ban voting against the override, out of deference to the Democratic governor's concerns over a possible court challenge, they explained. "The budget's tight," said Democratic State Senator Larry Teague, who



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is co-chairman of the Senate budget committee. “We’re working on giving businesses and individuals some tax relief. I don’t think it makes sense to spend money on expensive litigation.”

Even some lawmakers who voted to override the veto weren’t sure the law would survive a court challenge, including GOP Senate President Michael Lamoureux, who told reporters: “If it was an easy answer, then people wouldn’t be raising that subject [a lawsuit].”

Among those considering legal action against the law was Rita Sklar, executive director of the ACLU’s Arkansas affiliate. “We are going to do everything within our power to protect the health and reproductive decision-making abilities of women,” she stated, “and in this case that includes looking very carefully at litigation.”

Pro-abortion groups derided the new law as destructive of a woman’s choice to terminate a pregnancy. “It’s disheartening that our lawmakers are knowingly passing an unconstitutional abortion ban for the sake of politics,” commented Jill June, head of Planned Parenthood of the Heartland.

On the flip side, Republican State Representative Andy Mayberry, the bill’s primary sponsor, applauded the veto override, insisting that HB 1037 “is a good bill and it saves babies’ lives, and I can’t wait for it to become law.” He said he believed the bill would withstand a court challenge of its constitutionality, noting that it was modeled after a similar Nebraska law that has not been challenged in court.

According to the [Huffington Post](#), “the American College of Obstetricians and Gynecologists says it knows of no legitimate evidence that shows a fetus can experience pain. It says a fetus’ brain begins its final stage of development between the 20th and 40th weeks of pregnancy, and that certain hormones that develop in the final trimester also must be present for it to feel pain. It’s not known exactly when those hormones are formed.”

But [World Magazine](#) reported that Americans United for Life pointed to a “2010 testimony from Dr. Tom Grissom, who told the Nebraska Legislature that by seven weeks, unborn children have developed some of the nerve capacities related to painful sensations. Those nerves are fully developed by 20 weeks.”

And Mary Spaulding Balch of [National Right to Life](#), whose model legislation is the basis for nearly all “pain-capable” pro-life legislation that has been enacted in states thus far, noted studies showing that “unborn children jerk away from painful stimuli, their stress hormones increase, and they require anesthesia before any fetal surgery.”

In addition to the 20th-week bill, Arkansas lawmakers are also considering a measure that would prohibit most abortions after 12 weeks of pregnancy, the age at which a fetal heartbeat can be detected by a standard ultrasound. Should the bill pass, it would represent the most restrictive abortion law in the nation.

Following its override of Beebe’s veto, the Senate voted 26-8 in support of the 12th-week abortion ban, which in addition to exemptions for rape, incest, and the mother’s life, would allow abortions when supposedly lethal physical conditions are indicated in the pre-born baby. While demurring on whether or not he would veto the bill, Gov. Beebe indicated that it appeared to be even more problematic with regard to *Roe v. Wade* than the one just passed by the legislature.

Planned Parenthood president Cecile Richards called the proposed measure “extreme legislation” that would “insert politics into women’s personal medical decisions....” Likewise, the Center for Reproductive Rights said the bill would be “the most extreme abortion ban in the country” and vowed to “fight this unconstitutional law if enacted.”

The “heartbeat” bill has been a source of contention even among pro-life groups around the nation, noted the [Washington Times](#), with proponents insisting that it will force an end to abortion because, said one pro-life leader, “it’s hard to be against a bill that says that once a baby’s heart is beating, you



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shouldn't take his life." Others pro-life supporters, said the *Times*, fear that such measures would not survive constitutional challenges and would "hand the anti-abortion movement a serious setback in the courts."

Photo of Arkansas State Capitol in Little Rock, Arkansas



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