

## Amendment to the Constitution of Kentucky Regarding Abortion (HB 91)

### Why is this amendment necessary?

When *Roe v. Wade* is overturned by the Supreme Court of the United States, the powers over abortion regulation will return to the states. This legislation, sponsored by Rep. Joe Fischer (R- Ft. Thomas), will make clear that abortion is not a constitutional right. Multiple challenges to pro-life legislation are at the U.S. Supreme Court, which leans conservative, making now the time to anticipate the overturn of *Roe v. Wade*. Kentucky doesn't want legal abortion, requiring Kentucky to be proactive in setting up a post-Roe framework that bans elective abortion.

### What other states have enacted this legislation?

Arkansas (1988), Tennessee (2014), Alabama (2018), West Virginia (2018), and Louisiana (2020)<sup>i</sup> have all enacted Constitutional Amendments stating that the “right” to abortion does not exist in their constitution. Kansas has already passed this Constitutional Amendment in the 2021 session and Iowa has passed the amendment pending approval of the language by the State House and Senate.<sup>ii</sup>

### Have there been any major challenges?

Tennessee's constitutional amendment was challenged but was eventually upheld.<sup>iii</sup> The provision used against Tennessee does not exist in the Kentucky Constitution and is, therefore, unlikely to be a barrier. No other challenges have been brought against this Amendment.

### What language has been used in other successful Amendments?

Arkansas<sup>iv</sup>:

- “§ 1. Public funding: No public funds will be used to pay for any abortion, except to save the mother's life.
- § 2. Public policy: The policy of Arkansas is to protect the life of every unborn child from conception until birth, to the extent permitted by the Federal Constitution.
- § 3. Effect of amendment: This amendment will not affect contraceptives or require an appropriation of public funds.

Tennessee<sup>v</sup>:

- Nothing in this Constitution secures or protects a right to abortion or requires the funding of an abortion. The people retain the right through their elected state representatives and state senators to enact, amend, or repeal statutes regarding abortion, including, but not limited to, circumstances of pregnancy resulting from rape or incest or when necessary to save the life of the mother

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Alabama<sup>vi</sup>:

- (a) This state acknowledges, declares, and affirms that it is the public policy of this state to recognize and support the sanctity of unborn life and the rights of unborn children, including the right to life.
- (b) This state further acknowledges, declares, and affirms that it is the public policy of this state to ensure the protection of the rights of the unborn child in all manners and measures lawful and appropriate.
- (c) Nothing in this constitution secures or protects a right to abortion or requires the funding of an abortion.

West Virginia<sup>vii</sup>:

- A "yes" vote supported this amendment to add language to the West Virginia Constitution stating that "nothing in this Constitution secures or protects a right to abortion or requires the funding of abortion."
- A "no" vote opposed this amendment to add language to the West Virginia Constitution stating that "nothing in this Constitution secures or protects a right to abortion or requires the funding of abortion."

Louisiana<sup>viii</sup>:

- The constitutional amendment would add a sentence to the Louisiana Declaration of Rights: "To protect human life, nothing in this constitution shall be construed to secure or protect a right to abortion or require the funding of abortion."

## How much money was raised for and against each amendment?

State	Support	Oppose	Result
Arkansas	No Records Available	No Records Available	Passed
Tennessee <sup>ix</sup>	\$1,686,741.00	\$4,254,862.00	Passed
Alabama <sup>x</sup>	\$7,993.00	\$1,564,749.97	Passed
West Virginia <sup>xi</sup>	\$9,298.50	\$0.00	Passed
Louisiana <sup>xii</sup>	\$537,232.06	\$0.00	Passed

<sup>i</sup> [https://ballotpedia.org/Louisiana No Right to Abortion in Constitution Amendment \(2020\)](https://ballotpedia.org/Louisiana_No_Right_to_Abortion_in_Constitution_Amendment_(2020))

<sup>ii</sup> <https://www.catholicnewsagency.com/news/>

<sup>iii</sup> [http://online.wsj.com/public/resources/documents/2014\\_1114\\_tennamend.pdf](http://online.wsj.com/public/resources/documents/2014_1114_tennamend.pdf)

<sup>iv</sup> <https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=c6f0b0cb-3fa7-4136-af33-1b2f75b0460e&nodeid=AABAAZACRAAC&nodepath=%2FROOT%2FAAB%2FAABAAZ%2FAABAAZACR%2FAABAAZACRAAC&level=4&haschildren=&populated=false&title=%E2%80%821.+Public+funding.&config=014BJAA0MzRkMWNhMC1jNwY1LTQzZDYtODVhNi03M2E0MwVmZGQyYmYKAFBvZENhdGFsb2eMqWj4MQ4akpJISYI55E7B&pdDocFullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A4MP0-04P0-R03N-03V7-00008-00&ecomp=h3t7kkk&prid=3b0ad1c0-a07e-478f-8ca6-4559015be739>

<sup>v</sup> <https://web.archive.org/web/20140725170841/http://www.capitol.tn.gov/Bills/107/Bill/SJR0127.pdf>

<sup>vi</sup> <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2017RS/PrintFiles/HB98-int.pdf>

<sup>vii</sup> [http://www.wvlegislature.gov/Bill\\_Status/bills\\_text.cfm?billdoc=SJR12%20SUB1.htm&yr=2018&sesstype=RS&i=12&houseorig=s&billtype=jr](http://www.wvlegislature.gov/Bill_Status/bills_text.cfm?billdoc=SJR12%20SUB1.htm&yr=2018&sesstype=RS&i=12&houseorig=s&billtype=jr)

<sup>viii</sup> <http://www.legis.la.gov/Legis/ViewDocument.aspx?d=1124937>

<sup>ix</sup> [https://ballotpedia.org/Tennessee Legislative Powers Regarding Abortion, Amendment 1 \(2014\)](https://ballotpedia.org/Tennessee_Legislative_Powers_Regarding_Abortion,_Amendment_1_(2014))

<sup>x</sup> [https://ballotpedia.org/Alabama Amendment 2, State Abortion Policy Amendment \(2018\)](https://ballotpedia.org/Alabama_Amendment_2,_State_Abortion_Policy_Amendment_(2018))

<sup>xi</sup> [https://ballotpedia.org/West Virginia Amendment 1, No Right to Abortion in Constitution Measure \(2018\)](https://ballotpedia.org/West_Virginia_Amendment_1,_No_Right_to_Abortion_in_Constitution_Measure_(2018))

<sup>xii</sup> [https://ballotpedia.org/Louisiana Amendment 1, No Right to Abortion in Constitution Amendment \(2020\)](https://ballotpedia.org/Louisiana_Amendment_1,_No_Right_to_Abortion_in_Constitution_Amendment_(2020))