

# Gestational Limits on Abortion in the United States Compared to International Norms

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*Abstract: The United States is one of only seven countries in the world that permit elective abortion past 20 weeks. Upholding laws restricting abortion on demand after 20 weeks would situate the United States closer to the international mainstream, instead of leaving it as an outlying country with ultra-permissive abortion policies.*

This report compares gestational limits in United States abortion law with gestational limits in the abortion law of the international community. The goal is to determine where the United States stands in comparison to international norms, with its federal policy enshrined in *Roe v. Wade*, which allows abortion past 20 weeks and without restriction until fetal viability.

The sample group for this project included a total of 198 countries, independent states, and semi-autonomous regions with populations exceeding 1 million. Of these 198 countries, independent states, and regions worldwide, 59 allow abortion without restriction as to reason, otherwise known as elective abortion or abortion on demand. The remaining 139 countries require *some* reason to obtain an abortion ranging from most restrictive (to save the life of the mother or completely prohibited) to least restrictive (socioeconomic grounds) with various reasons in between (e.g., physical health, mental health).<sup>1[i]</sup>

Currently, the United States permits abortion on demand through viability, which is usually marked around 24 weeks. For this report, it is appropriate to compare the United States with the other 58 countries that allow abortion on demand up to some point in pregnancy. The remaining 139 countries require some reason to obtain an abortion (that is to say, they do not permit abortion on demand) and are, by definition, more restrictive than the United States on the issue of gestational limits. To require some reason before obtaining an abortion is inherently more restrictive than not requiring any reason at all.

This report finds that the United States is one of only seven countries in the world that permit elective abortion past 20 weeks. This finding suggests that current proposals in the

United States to restrict elective abortions past 20 weeks would move the United States from the fringe, ultra-permissive end of the spectrum to a position closer to international norms.

### **Terminology and Method of Comparison**

Not all countries or statutes use the same terminology when drafting restrictions on late-term elective abortion. When drafting a restriction on elective abortion past 20 weeks of pregnancy, the most common measurement of “weeks of pregnancy” is gestational age, or in short form “gestation.” Gestational age marks the duration of pregnancy, which is most commonly and medically measured from the date of the woman’s last menstrual period. The woman’s last menstrual period is the most identifiable date by which to measure the duration of pregnancy, and occurs approximately two weeks before conception or fertilization.

The vast majority of countries in this international survey of abortion laws use gestational age to measure duration of pregnancy. Over 80% of countries maintaining some restriction on elective abortion use gestational age as the method of calculating duration of pregnancy. However, a minority of countries measures duration of pregnancy from “conception” or “fertilization.” One country measures from the time of “implantation,” which occurs approximately one week after conception or fertilization. Some statutes do not even specify a method of measurement, simply using the vague term “weeks of pregnancy” without indicating a precise method measuring the duration of pregnancy.

Conception or fertilization is the moment when an ovum and sperm unite, which creates a unique human organism. The date of conception or fertilization is often difficult to determine, as few women know the exact date they conceived. Because the last menstrual period is a more ascertainable date, in many cases doctors add two weeks to the woman’s last menstrual period to approximate the date of conception or fertilization.

#### *Using Gestational Age to Produce the Best International Comparison*

This report uses gestation to compare restrictions on elective abortion that are based on duration of pregnancy. More than 80% of countries already use gestation in establishing duration of pregnancy restrictions on elective abortion and measuring the age of the unborn child using gestation is in line with common medical practice.

For those countries that use a different measurement of age, such as conception or fertilization or pregnancy, this study converts the measurement of age into gestation by adding two weeks to date back to the woman’s last menstrual period. Using gestation as a common method of measuring duration of pregnancy restrictions on elective abortion produces a more meaningful comparison.

### **International Gestational Limitations on Elective Abortion**

The sample group of countries for this project included a total of 198 countries, independent states, and semi-autonomous regions with populations exceeding 1 million.<sup>1[1]</sup>

1Of these 198 countries, independent states, and regions worldwide, 59 allow abortion without restriction as to reason, otherwise known as elective abortion or abortion on demand.<sup>1[2] 1[ii]</sup>

2The remaining 139 countries require some reason to obtain an abortion ranging from most restrictive (to save the life of the mother or completely prohibited) to least restrictive (socioeconomic grounds) with various reasons in between (e.g., physical health, mental health).<sup>1[iii] [iv] [v] [vi]</sup>

Of the 59 countries permitting elective abortion<sup>1[vii]</sup>:

- 9 countries limit elective abortion before the 12<sup>th</sup> week of gestation<sup>1[3]</sup>,
- 36 countries limit elective abortion at 12 weeks gestation<sup>1[4] 4[5] 5[6]</sup>,
- 6 countries limit elective abortion between 12 and 20 weeks gestation<sup>1[7] 7[8]</sup>,

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<sup>1[1]</sup> For purposes of this study, Puerto Rico is not included as a separate “country, independent state, or semi-autonomous region with population exceeding 1 million” as it follows the elective abortion policy of the United States and is subject to the constitutional determination of *Roe v. Wade* on elective abortion permissiveness. Center for Reproductive Rights, “The Legal Right to Abortion in Puerto Rico,” July 2009

<sup>2[2]</sup> Other studies have counted 60 countries in the category of abortion without restriction as to reason. This study discovered that Bahrain could not be considered a country allowing elective abortion, as it permits abortion only to save the life of the mother in practice, although the country’s statutory language is vague.

<sup>3[3]</sup> Three countries (Croatia, Macedonia, Montenegro) limit elective abortion past 10 weeks from conception. Converting this statutory language to gestational age, Croatia, Macedonia, and Montenegro limit elective abortion past 12 weeks gestational age. Using gestational age, Croatia, Macedonia, and Montenegro belong in the category of limiting abortion “at 12 weeks.”

<sup>4[4]</sup> Two countries (Belgium, Germany) limit elective abortion past 12 weeks from conception. Converting this statutory language to gestational age, Belgium and Germany limit elective abortion past 14 weeks gestational age. Using gestational age, Belgium and Germany belong in the category of limiting abortion “between 12 and 20 weeks.”

<sup>5[5]</sup> Two countries (Mongolia, Tunisia) limit elective abortion past 12 weeks of “pregnancy” without defining how pregnancy duration is measured. This study measures 12 weeks of “pregnancy” as 12 weeks gestational age, therefore Mongolia and Tunisia are included in the category limited “at 12 weeks.” However, if Mongolia and Tunisia measure “pregnancy” from the date of conception or fertilization, then they would belong in the category “between 12 and 20 weeks.”

<sup>6[6]</sup> Luxembourg recently broadened its abortion policy in 2013 to allow women to decide if they are “in distress” for purposes of obtaining an abortion within the first 12 weeks of pregnancy. This broadening of the law effectively allows elective abortion in the first 12 weeks of pregnancy. Luxembourg does not specify whether “weeks of pregnancy” are measured by gestational age or from conception or fertilization.

- 8• 7 countries permit elective abortion past 20 weeks or have no gestational limit.
- 1 country maintains a federal system where abortion policy is determined at the state/territory level, and at least two of those states permit elective abortion past 20 weeks.

Australia is the one country where a federal system is in place, but abortion policy is determined on the state or territory level. Three states or territories within Australia permit elective abortion, and two allow elective abortion past 20 weeks. However, other states and territories of Australia maintain more restrictive abortion policies and some do not permit elective abortion at all.<sup>1[viii]</sup> Due to the diverse range of abortion policy in Australia, from restrictive to ultra-permissive, this study does not include Australia, as a whole, as a country that permits elective abortion past 20 weeks.

More than 75% of the countries permitting abortion without restriction as to reason do not permit elective abortions past 12 weeks gestation.<sup>1[ix]</sup> [x]

Only 12% (7 out of 59) of the countries permitting abortion without restriction as to reason permit elective abortion past 20 weeks gestation.

The U.S. is among these 7 countries that permit elective abortion past 20 weeks.<sup>1[xi]</sup> This is true whether 20 weeks is measured from the last menstrual period (gestational age), conception, or implantation. No matter how duration of pregnancy is measured, whether by gestational age or conception or fertilization, or implantation, all countries in this category pass the 20-week threshold. These countries/territories are:

- Canada (no restriction in law)<sup>1[xii]</sup>
- China (no restriction in law)<sup>1[xiii]</sup>
- Netherlands (24 weeks)
- North Korea (no restriction in law)
- Singapore (24 weeks)

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“Restrictions on abortion in Luxembourg to be relaxed,” November 2013, <http://www.wort.lu/en/view/restrictions-on-abortion-in-luxembourg-to-be-relaxed-50af1938e4b0246412999677>. Luxembourg Penal Code, L. Nov. 15, 1978, Art. 353. This study measures 12 weeks of “pregnancy” as 12 weeks gestational age; therefore, Luxembourg is included in the category limited “at 12 weeks.” However, if Luxembourg measures “pregnancy” from the date of conception or fertilization, then it would belong in the category “between 12 and 20 weeks.”

7[7] Sweden limits elective abortion past 18 weeks of “pregnancy” without defining how pregnancy duration is measured. However, whether Sweden measures 18 weeks from conception or fertilization (20 weeks gestational age) or measures 18 weeks gestational age, Sweden’s law still falls in the category “between 12 and 20 weeks.”

8[8] Austria is the only country permitting elective abortion that measures duration of pregnancy from the date of “implantation.” Austria restricts elective abortion past the first 3 months of pregnancy measured from implantation. In terms of gestational age this would convert to approximately 15 weeks. Using gestational age, Austria falls in the category of “between 12 and 20 weeks.”

- United States (viability)<sup>1</sup>[9]
- 9• Vietnam (no restriction in law)<sup>1</sup>[xiv]

The United States is within the top 4% of most permissive abortion policies in the world (7 out of 198) when analyzing restrictions on elective abortion based on duration of pregnancy.

### **Implications for Current Policy in the United States**

Under U.S. law, abortion on demand is permitted without restriction through viability. Viability can vary, and is decreasing in terms of weeks of gestation as perinatal medicine advances, but normally occurs no earlier than 24 weeks.

Recently, in the United States, there has been great interest in restricting abortion on demand after 20 weeks.<sup>1</sup>[xv] [xvi] Two states have had 20-week laws on the books since before *Roe v. Wade*. Eleven more states have enacted 20-week laws in recent years.<sup>1</sup>[10] A proposed 20-week law in Albuquerque, New Mexico failed to gain majority support in 2013 but was notable for the engaged citizen activism that resulted in the proposal being put on a municipal ballot for a direct vote.<sup>1</sup>[xvii]

<sup>10</sup>There is also interest at the federal level in restricting elective abortion after 20 weeks. In 2013, the U.S. House of Representatives passed a 20-week law.<sup>1</sup>[xviii] A similar law has been introduced in the U.S. Senate.<sup>1</sup>[11] [xix]

<sup>11</sup>Permitting abortion on demand past 20 weeks places the United States among the top 4% of most-permissive countries in the world based on duration of pregnancy restrictions on abortion. If the United States adopts a federal policy restricting elective abortion past 20 weeks, or if more states adopt such policies, the U.S. will more closely align itself with the international norm that limits elective abortion past 12 weeks. Policies imposing gestational limits on elective abortion have been overwhelmingly adopted by countries permitting abortion on demand, indicating policies that encourage woman's safety in limiting abortion to early pregnancy and policies that protect unborn children from pain and prolonged exposure to the risk of abortion.

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<sup>9</sup>[9] Puerto Rico is not considered a separate country for purposes of this study, as it follows U.S. elective abortion policy, permitting abortion on demand through fetal viability without restriction. Puerto Rico is included under the United States as a special jurisdiction that allows elective abortion past 20 weeks. Center for Reproductive Rights, "The Legal Right to Abortion in Puerto Rico," July 2009

<sup>10</sup>[10] Twenty-week laws have been challenged in court. To date, Arizona, Georgia, and Idaho have been involved in litigation defending their 20-week restrictions on elective abortion. Although the U.S. Supreme Court recently declined to hear a case involving a 20-week law, it will likely consider the issue at some point.

<sup>11</sup>[11] Five states have enacted or attempted to enact 20-week laws using gestational age. Nine states have enacted or attempted to enact 20-week laws using conception or fertilization. One state has enacted a 20-week law using pregnancy. The federal House bill, the Pain- Capable Unborn Child Act, and the similar law introduced in the U.S. Senate, measure the 20-week restriction using fertilization.

## Conclusions

In terms of gestational limits, the United States ranks among 7 countries with the most permissive abortion policies. The clear norm among countries that permit elective abortion is to limit abortion to before 20 weeks gestation, and elective abortion is more commonly limited to 12 weeks (the first trimester).

Twenty-week abortion laws in the United States are neither extreme nor unreasonable. Rather, they move the United States closer to international norms of legislating what is safe and healthy for the mother and what grants unborn children more protection in the womb.

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i[xv] Guttmacher Institute, “State Legislation and Policies Enacted in 2013 Related to Reproductive Health,” “An Overview of Abortion Laws,” and “State Policies on Later Abortions,” October 2013

i[xv] Betsy Johnson, “Momentum for Late-Term Abortion Limits,” Charlotte Lozier Institute, August 2013, <http://www.lozierinstitute.org/momentum-for-late-term-abortion-limits/>

i[xvii] Juliet Lapidus, “Albuquerque Rejects 20-Week Abortion Ban,” *New York Times*, November 2013

i[xviii] House Bill H.R. 1797, Pain-Capable Unborn Child Protection Act, 113<sup>th</sup> Congress (2013-2014)

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