



North Dakota Legislative Council

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THE EFFECT OF THE UNITED STATES SUPREME COURT RESTORING NORTH DAKOTA'S AUTHORITY TO PROHIBIT ABORTION

This memorandum provides information on the constitutional restoration of North Dakota's authority to fully regulate abortion.

LEGAL BACKGROUND

In *Roe v. Wade*, 410 US 113 (1973), the United States Supreme Court ruled an individual has the constitutional right to obtain an abortion until the fetus becomes viable, based on the right to privacy contained in the Due Process Clause of the 14th Amendment to the United States Constitution. However, the Court held the right is not absolute, and it must be balanced against the state's interests in protecting health, medical standards, and prenatal life. In *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992), the Supreme Court adhered to the precedent established in *Roe* by upholding a woman's constitutional right to an abortion but allowed states to regulate abortions before viability as long as a state regulation did not impose an undue burden on a woman seeking a legal abortion.

On June 24, 2022, the Supreme Court issued its decision in *Dobbs v. Jackson Women's Health Organization*¹ holding the Constitution does not confer a right to abortion, overturning *Roe* and *Casey*, and returning the authority to regulate abortion to the people and their elected representatives.

NORTH DAKOTA'S STATUTORY ABORTION PROVISIONS

The Supreme Court's ruling in *Dobbs* reverts the authority to regulate abortion back to the states and causes two statutory provisions in North Dakota to become effective.

Prohibition on Abortion

North Dakota Century Code Section 12.1-31-12 makes it a Class C felony for a person to perform an abortion, except for the pregnant female who is exempted from prosecution under the section. In addition, Section 12.1-31-12 outlines three affirmative defenses for a violation of the section. An affirmative defense is a defense in which the defendant introduces evidence, which, if found to be credible, will negate criminal liability, even if it is proven the defendant committed the alleged act. The affirmative defenses negating criminal liability for a violation of Section 12.1-31-12 are if the abortion was performed to prevent the death of the pregnant female, if the pregnancy resulted from sexual assault or incest, or if the individual performing the abortion was acting within the scope of that individual's regulated profession and under the direction of a physician. Section 12.1-31-12 has a contingent effective date, and becomes effective July 28, 2022.

Prohibition on Human Dismemberment Abortion

Section 14-02.1-04.2 makes it a Class C felony for a person to perform a human dismemberment abortion. The section provides an exception in cases of a medical emergency and exempts the pregnant mother from prosecution under the section. This law also has a contingent effective date and becomes effective July 28, 2022.

CONCLUSION

The Attorney General certified to the Legislative Council on June 28, 2022, that the United States Supreme Court overturned *Roe v. Wade*. The receipt of the certification triggered Sections 12.1-31-12 and 14-02.1-04.2 to become effective on July 28, 2022.

¹ 945 F.3d 265 (5th Cir. 2019), cert. granted, 141 S.Ct. 2619, 209 L.Ed.2d 748 (U.S. May 17, 2021) (No. 19-1392).