

# [***The Arizona Abortion Law Repeal: A Lesson in Pro-Life Prudence | Opinion***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6C06-30F1-JBR6-9001-00000-00&context=1516831)

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**Highlight:** The 1864 Arizona law banning abortion with few exceptions was too far outside the mainstream of public opinion to survive.

**Body**

In ***politics***, no one gives you credit for taking the least-bad option. Two [*Republican*](https://www.newsweek.com/topic/republican?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships) lawmakers in Arizona will likely be pilloried, and perhaps even primaried, for their vote to [*repeal*](https://www.newsweek.com/arizona-republicans-repeal-abortion-ban-still-going-effect-though-1896290?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships) the Grand Canyon State's near-total ban on abortion. From the perspective of many pro-life activists, their decision is tantamount to betrayal of a cause many conservatives hold dear.

Yet these two GOP state senators made a rational—maybe even laudatory—call. The decision to rescind the near-total ban, which pre-dated Arizona statehood, may paradoxically give the cause of life a better shot at the ballot box come November.

Let's back up a bit. In 2022, a few months before the [*Supreme Court*](https://www.newsweek.com/topic/supreme-court?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships)'s decision in *Dobbs v. Jackson*, then-Arizona governor [*Doug Ducey*](https://www.newsweek.com/topic/doug-ducey?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships), a Republican, [*signed legislation*](https://www.usatoday.com/story/news/politics/2022/03/30/gov-ducey-signs-bill-outlawing-abortions-after-15-weeks-arizona/7223681001/) banning abortion in the state after 15 weeks (with exceptions for medical emergencies risking the life of the mother). The bill intentionally conflicted with the legal standard in *Roe v. Wade*, and national pro-life organizations [*celebrated*](https://sbaprolife.org/newsroom/press-releases/az-legislature-sends-life-saving-15-week-abortion-limit-gov-duceys-desk) it as an example of a state "taking bold strides to stop cruel late abortions."

A few months later, *Roe* was history. In Arizona, that meant the law of the land became not the 2022 15-week ban, but a near-total ban on the practice written for Arizona Territory in 1864. The law—which banned all abortions at all points of pregnancy, except for when the life of the mother was in danger—had been dead letter since 1973, when *Roe* was handed down.

In April, the state Supreme Court [*upheld*](https://time.com/6965338/arizona-supreme-court-abortion-ban/) the near-total ban, and a political uproar ensued. The pro-life movement in Arizona was initially able to [*forestall*](https://www.nytimes.com/2024/04/20/us/arizona-abortion-trump.html) an attempt to repeal the law. But on May 1, the Arizona state [*Senate*](https://www.newsweek.com/topic/senate?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships) passed a bill repealing the Civil War-era law, making the 2022 bill the new law of the land.

Some pro-life [*Republicans*](https://www.newsweek.com/topic/republicans?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships) were incensed. "This is innocent blood," [*said*](https://www.nytimes.com/2024/05/01/us/arizona-senate-house-abortion-ruling.html?unlocked_article_code=1.ok0.qSJD.C3pnr8zdH-Rg) State Sen. Anthony Kern, a Republican. "Why can't we show the nation we are pro-life? We will have the blessing of God over this state if we do that."

Kern's passion is understandable. From a pro-life perspective, every abortion is a tragedy—a failure of society to support moms and the children they carry, a failure of both parents to take responsibility for the new life they have created, a failure of the law to protect the most defenseless form of human life, even if it hasn't been born. But committed pro-lifers are [*not a majority*](https://news.gallup.com/poll/244709/pro-choice-pro-life-2018-demographic-tables.aspx) in this country. And as [*poll*](https://x.com/PTBwrites/status/1748342546126741990) after [*poll*](https://www.pewresearch.org/politics/2023/04/26/nearly-a-year-after-roes-demise-americans-views-of-abortion-access-increasingly-vary-by-where-they-live/) and [*ballot measure*](https://www.newsweek.com/after-ohio-pro-life-movement-needs-face-facts-opinion-1843767?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships) after [*ballot measure*](https://www.pbs.org/newshour/politics/kentucky-voters-reject-constitutional-amendment-on-abortion) show, Americans will choose an abortion regime they see as too permissive over one they see as too restrictive.

And Arizonans will soon be faced with that choice. Pro-choice organizers expect to have gathered enough [*signatures*](https://www.nbcnews.com/politics/2024-election/arizona-abortion-rights-amendment-backers-says-gathered-signatures-nee-rcna145922) to place the [*Arizona for Abortion Access Act*](https://www.tucsonsentinel.com/local/report/080823_abortion_amendment/full-text-arizona-abortion-access-act-initiative/) on the ballot this fall. The referendum will ask voters whether abortion rights should be enshrined in the state constitution, allowing the procedure up to roughly 24 weeks of gestation—or after, in some rare cases. As opponents quickly [*pointed out*](https://www.itgoestoofar.com/see-the-language), the proposed referendum would strike existing regulations off the books, including safety regulations of abortion clinics and parental consent requirements, and open the door to taxpayer-funded abortion.

But those very real and concerning objections to the Arizona abortion referendum will go unheard if pro-life activists focus on defending a law which didn't even make allowances for heartbreaking cases of rape and incest. While the philosophically consistent position is to encourage women in those circumstances to continue the pregnancy, rape and incest exceptions are [*overwhelmingly popular*](https://www.nbcnews.com/politics/2022-election/vast-majority-republicans-support-abortion-exceptions-rape-incest-moth-rcna52237). That alone would have sunk any effort to maintain the old, near-total ban.

Which makes the decision by State Senators T.J. Shope and Shawnna Bolick, the two Republicans who joined with all Democratic senators to repeal the near-total ban, worthy of more study. Bolick—who started her [*career*](https://www.azsenaterepublicans.com/shawnna-bolick) working as a staffer for former senator Rick Santorum (R-Penn.) as well as for the conservative Heritage Foundation, both staunch pro-life voices—made her decision to vote for repeal based on the knowledge that Arizona voters will be faced a choice over how the state should treat abortion.

Given public opinion polling and the string of losses the pro-life movement has suffered at the ballot box, it seems almost certain that a defense of the 1864 near-total ban against the more permissive 24-week limit envisioned by pro-choice supporters was doomed to fail. Arizona, a state that has been trending blue in recent elections, would have been incredibly unlikely to vote down a constitutional amendment enshrining abortion if the alternative was a ban from conception with no exceptions for rape or incest.

A [*post-Dobbs statement*](https://eppc.org/pro-life-principle-and-political-prudence/) published by pre-eminent pro-life scholars, including my Ethics and Public Policy Center colleagues Ryan Anderson and Erika Bachiochi, as well as numerous ethicists and legal scholars, foresaw this dilemma, and weighed in on the side of Shope and Bolick. "Suppose the law on the books now prohibits elective abortion at all stages, but a legislator makes a well-informed, good-faith assessment that political pressures guarantee its repeal. The only question is whether the state will now prohibit elective abortions [earlier in pregnancy]." In such a case, political prudence permits—and perhaps encourages—lawmakers to vote for liberalizing abortion laws to protect against the enshrining of a right to abortion within the Arizona state constitution.

The past year has not exactly been a litany of profiles in courage for Republicans on abortion. Former president [*Donald Trump*](https://www.newsweek.com/topic/donald-trump?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships) [*released*](https://thehill.com/homenews/campaign/4580775-read-trump-abortion-statement/) a statement encouraging pro-lifers to place electoral expedience over principle: "Always go by your heart, but we must win. We have to win." [*Kari Lake*](https://www.newsweek.com/topic/kari-lake?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships), the failed gubernatorial candidate currently running for Senate in Arizona, released a video which conspicuously refrained from calling for pro-life legislation, focusing on the need to provide pregnant moms with "[*more choices*](https://www.msn.com/en-us/news/other/kari-lake-explains-her-new-position-on-personal-and-private-abortion-issue-i-chose-life-but-i-m-not-every-woman/ar-BB1lwi8U)." Pro-lifers can, and should, be disappointed in politicians unwilling to back abortion restrictions that can withstand public scrutiny.

But the 1864 Arizona law was too far outside the mainstream of public opinion to survive. The pro-life side will always face deep-pocketed opposition and a hostile media environment. But reframing the upcoming referendum as a choice between restrictions at 15 weeks or 24 weeks, rather than 0 weeks or 24 weeks, might give those advocates for unborn life a better chance at pulling out an unlikely victory. And if they do, the decision of the two Arizona Republicans who chose to roll back the state's total abortion ban may end up being seen as a laudable act of prudence.

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*The views expressed in this article are the writer's own.*

[*Link to Image*](https://d.newsweek.com/en/full/2390091/arizona-state-flag.jpg)

**Graphic**

Arizona state flag

Robert Alexander/Getty Images

CANYON DE CHELLY, AZ - MARCH 18, 2017: The Arizona state flag flies beside the United States flag at the Visitor Center at Canyon de Chelly National Monument near Chinle, Arizona. Established in 1931, the monument is jointly managed by the National Park Service and the Navajo Nation. The monument is entirely on Navajo tribal lands in northeastern Arizona.

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