

**Senator John Kennedy
Questions for the Record**

Professor O. Carter Snead

1. During the hearing, Jocelyn Frye acknowledged that “1 percent of abortions happen at 21 weeks or later.” In raw numbers, approximately many abortions happen in the United States each year at or after 21 weeks of gestation?

ANSWER: According to the Guttmacher Institute, the total number of abortions in 2023 was 1,037,000 (<https://www.guttmacher.org/2024/03/despise-bans-number-abortion-united-states-increased-2023>). That means the total number of abortions that year after 21 weeks gestation (when the baby is capable of surviving outside her mother’s body) was **10,370**. I noted this fact in my oral testimony prior to Ms. Frye’s comments, though many Senators were voting and thus not present. As I mentioned in my testimony, there were thus six times as many late term (that is, post-viability abortions) than gun homicides involving children and teens during the same time period. At least 148 clinics in the United States provide late term abortions.

2. During the hearing, Jocelyn Frye testified that “the vast majority of pregnancies and abortions that are considered late in a pregnancy have to do with severe, devastating medical circumstances.” Is this an accurate statement? Please elaborate.

ANSWER: To my knowledge, there is no empirical evidence to support this frequently repeated claim. To the contrary, as I noted in my testimony, the best social science evidence available and the comments of abortion providers themselves suggest that many late term abortions do not involve threats to a mother’s life or health, nor do they involve terminally ill or disabled unborn babies. For example, one 2013 study found that **most** abortions done between 21 and 28 weeks are not “for reasons of fetal abnormality or life endangerment.” (<https://onlinelibrary.wiley.com/doi/10.1363/4521013>). Late term abortion provider Warren Hern himself told *The Atlantic* recently that in his practice, which performs abortions even later into pregnancy, “at least half, and sometimes more, of the women who come to the clinic do not have these diagnoses.” (<https://www.theatlantic.com/politics/archive/2023/05/dr-warren-hern-abortion-post-roe/674000/>). I would also note that according to medical experts, a late term

abortion is a longer and riskier procedure than simply delivering the baby. (<https://lozierinstitute.org/questions-and-answers-on-late-term-abortion/>).

3. During the hearing, Senator Welch suggested that those who advocate for pro-life policies “are committed to providing protection from conception to birth, but after that you’re on your own.” Based on your experience, is this an accurate statement?

ANSWER: Nothing could be further from the truth. I would refer the committee to the recently published report, “Two Years After Dobbs: State Action to Expand Support for Moms, Babies, and Families,” (<https://eppc.org/wp-content/uploads/2024/06/24-06-Two-Years-Later.pdf>) detailing the numerous public and private actions taken since Dobbs to expand Medicaid access, to increase access to childcare and medical assistance, to expand eligibility for social safety net programs, and to extend direct aid to pregnant women and new moms. Pregnancy Resource Centers across the country (including the Women’s Care Center in our own community- <https://www.womenscarecenter.org/>) provide a wide array of services to moms, babies, and families before and after the child is born. As the report notes, in 2022 alone the amount of such aid is estimated at \$367 million in value. As a professor at the nation’s flagship Catholic university, and as a Catholic myself, I am particularly concerned by the confusion reflected in Senator Welch’s remarks. The Catholic Church here in the United States (and around the world) has always sought to support mothers, babies, and families in need throughout life’s entire journey. The U.S. Conference of Catholic Bishops has recently redoubled these efforts in its nationwide “Walking with Moms in Need” initiative (<https://www.walkingwithmoms.com/>). At Notre Dame, the de Nicola Center for Ethics and Culture (which I served as director from 2012 until July 1, 2024) announced the “Women and Children First Initiative,” just after the *Dobbs* decision (<https://ethicscenter.nd.edu/programs/culture-of-life/women-and-children-first/>). National pro life advocacy organizations also aim to help women, children, and families in need through programs such as the “Her Plan” initiative, meant to facilitate access to a wide variety of social services for pregnant women and new moms in need (<https://sbaprofife.org/pregnancy-help>).

4. During the hearing, many questions concerned Texas law:

- a. Does Texas law allow a woman who receives an abortion to be criminally prosecuted?

ANSWER: No. Women who seek an abortion for themselves or undergo an abortion are explicitly exempt from criminal, administrative, and civil penalties. (Most important citations are Sec. 170A.003 & Sec. 171.206(b)(1), TX Health & Safety Code since that's our trigger law and Heartbeat Act. However, even before that we have repeated clarifications in our pre-2021 laws that the woman herself is not liable: Sec. 171.064(b); Sec. 171.065(b); Sec. 171.106; Sec. 171.152; Sec. 171.154(d)(1), TX Health & Safety Code)

- b. If a woman is diagnosed with a life-threatening condition, does Texas law require that the woman's death or serious physical impairment be imminent before an abortion can be performed?

No. Texas law requires that the woman has either 1) a life-threatening physical condition or 2) a serious risk of substantial impairment of a major bodily function. It does not require the threat or risk be immediate but it can be foreseen. This was the interpretation of the Supreme Court of Texas in a final ruling in the Zurawski case on May 31st, 2024 as well as clarification by the Texas Medical Board in official rules published on (Texas v Zurawski, page 3, <https://www.txcourts.gov/media/1458610/230629.pdf> & Texas Administrative Code, Title 22, Part 9, Chapter 165.8(d), <https://www.tmb.state.tx.us/idl/1C5CBA1C-052B-403F-A0D1-FAF22ADD05CB>). As I noted explicitly in my testimony, the Supreme Court of Texas recently affirmed in Zurawski that serious health risks need not be imminent to justify abortion and that any clinician who says so is "simply wrong in that legal assessment."

- c. Since the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), are you aware of any prosecutions brought under Texas law against an individual who performed an abortion? If so, please discuss.

ANSWER: To my knowledge, no one has been prosecuted for performing an abortion in Texas since *Dobbs*. Based on my research, there appears to have only been three **civil** lawsuits filed since 2021 under the Texas Heartbeat Act – all in response to a September 2021 OpEd by an abortion provider publicly declaring that he had violated the law. Two of these suits were never pursued (it seems that there was no attempt to serve process) and the remaining suit was dismissed by the court (<https://www.texastribune.org/2022/12/08/texas-abortion-provider-lawsuit/>). Thus, all available evidence suggests that there has not been a single successful “bounty” case filed since the passage of the Heartbeat Act, much less a successful one.