

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2976

By Delegates C. Pritt, McGeehan, and Chiarelli

[Introduced January 24, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend of the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §16-2P-1, §16-2P-2, §16-2P-3, §16-2P-4, §16-2P-5, and §16-2P-6, all relating
 3 to the creation of the "Keep Roe Reversed Forever Act;" creating a civil action for injunctive
 4 and declaratory relief pursuant to the Tenth Amendment and the establishment clause of
 5 the First Amendment of the United States Constitution and Section 3-15, Article III of the
 6 West Virginia Constitution against a federal actor that attempts to remove restrictions
 7 imposed by this State and its people on licentious religious practices of convenience
 8 abortion; providing for a short title; providing for legislative findings; providing for
 9 definitions; providing for enforcement, supplemental jurisdiction and construction; and
 10 providing for an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2P. KEEP ROE REVERSED FOREVER ACT.

§16-2P-1. Short title.

1 This article and act may be referred to as the "Keep Roe Reversed Forever Act."

§16-2P-2. Legislative findings.

1 The legislature finds that:

2 (a) Article VI clause 2 of the United States Constitution sets forth that the text of the United
 3 States Constitution is the supreme law of the land and reads, "This Constitution, and the Laws of
 4 the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall
 5 be made, under the Authority of the United States, shall be the supreme Law of the Land; and the
 6 Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to
 7 the Contrary notwithstanding," which means that although federal law made by the three federal
 8 branches of government preempts state law when they conflict, the text of the United States
 9 Constitution preempts federal laws made by the three federal branches when they conflict;

10 (b) The question of when life begins - from the moment of conception until the time of birth -
 11 and convenience abortion practices are a matter of religion that are governed by the establishment

12 clause and the free exercise clause of the First Amendment of the United States Constitution,
13 which reads that the government "shall make no law respecting an establishment of religion, or
14 prohibiting the free exercise thereof;"

15 (c) Section 3-15, Article III, of the West Virginia Constitution requires the same thing as the
16 establishment clause and free exercise clause of the First Amendment of the United States
17 Constitution and reads, "No man shall be compelled to frequent or support any religious worship,
18 place or ministry whatsoever; nor shall any man be enforced, restrained, molested or burthened, in
19 his body or goods, or otherwise suffer, on account of his religious opinions or belief, but all men
20 shall be free to profess and by argument, to maintain their opinions in matters of religion; and the
21 same shall, in nowise, affect, diminish or enlarge their civil capacities; and the Legislature shall not
22 prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect
23 or denomination, or pass any law requiring or authorizing any religious society, or the people of
24 any district within this state, to levy on themselves, or others, any tax for the erection or repair of
25 any house for public worship, or for the support of any church or ministry, but it shall be left free for
26 every person to select his religious instructor, and to make for his support, such private contracts
27 as he shall please;"

28 (d) The United States Supreme Court in overruled *Roe v. Wade*, 410 U.S. 113 (1973) and
29 *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) in *Dobbs v. Jackson Women's Health*
30 *Organization*, 19-1392 (2022) because the decisions were egregiously wrong when decided and
31 for other reasons set forth in the opinion;

32 (e) In response to the leaking decision of the Dobbs' decision, the Federal Congress set
33 out to codify the *Roe* and *Casey* decisions, through the Women's Health Protection Act and other
34 similar measures, while threatening to remove the filter buster to do so;

35 (f) The textual basis in the United States Constitution for permanently overruling the
36 egregiously wrong decisions in *Roe* and *Casey* and for prohibiting the federal Congress or
37 Executive branch from codifying or reviving the *Roe* and *Casey* decisions through policy

38 proposals, like the Women's Health Protection Act and other similar legislation, is the
39 establishment clause of the First Amendment of the United States Constitution because a policy
40 created by any of the three federal branches that prohibits the States from regulating convenience
41 abortion practices has the effect of establishing America as a secular humanist theocracy;

42 (g) Prior to *Roe* and *Casey*, the Supreme Court of the United States found that secular
43 humanism is a religion for purposes of the First Amendment's religious clauses in

44 (1) *Torcaso v. Watkins*, 367 U.S. 488 (1961);

45 (2) *School District of A Bington Township Pa. v. Schempp*, 374 U.S. 203 (1963);

46 (3) *United States v. Seeger*, 380 US 163 (1965);

47 (4) *Welsh v. United States*, 398 U.S. 333 (1970), and the federal courts of appeals found
48 the same thing in:

49 (1) *Malnak v. Yogi*, 592 F.2d 197 (3d Cir.1979);

50 (2) *Theriault v. Silber*, 547 F.2d 1279 (5th Cir.1977);

51 (3) *Thomas v. Review Bd.*, 450 U.S. 707 (1981);

52 (4) *Lindell v. McCallum*, 352 F.3d 1107 (7th Cir.2003);

53 (5) *Real Alternatives, Inc. v. Sec'y Dep't of Health & Human Servs.*, 150 F. Supp.

54 3d 419, 2017 WL 3324690 (3d Cir. Aug. 4, 2017); and

55 (6) *Wells v. City and County of Denver*, 257 F.3d 1132 (10th Cir. 2001);

56 (h) The naked assertions that "life does not begin at conception," that "convenience
57 abortion is not immoral," or that "convenience abortion is not murder" amounts to a series of
58 unproven faith-based assumptions that are implicitly religious and inseparably linked to the
59 religion of secular humanism;

60 (i) While convenience abortion practices are sacred in the religion of secular humanism,
61 those practices are considered to be evil by other religions, whose members do not want to pay
62 taxes to support a secular humanist theocracy in the place of a Constitutional Republic;

63 (j) Unlike the establishment clause, the right of convenience abortion, privacy, and

64 autonomy are not found in the text of the United States Constitution, and the States, therefore,
 65 have the authority to regulate convenience abortion practices through the powers conferred to
 66 them by the Tenth Amendment of the United States Constitution which reads, "The powers not
 67 delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved
 68 to the States respectively, or to the people;"

69 (k) While the belief or disbelief in the morality of convenience abortion practices is
 70 protected under the free exercise clause of the First Amendment of the United States Constitution
 71 and under Section 3-15, Article III, of the West Virginia Constitution, the free exercise clause is not
 72 absolute;

73 (l) As part of American tradition and heritage since the founding, this State has been
 74 permitted under the power conferred to it through the Tenth Amendment to regulate licentious
 75 religious practices, which includes convenience abortion practices, at the expense of the free
 76 exercise clause of the First Amendment of the United States Constitution;

77 (m) Convenience abortion practices promote licentiousness and attempt to justify
 78 practices that are inconsistent with the peace and safety of this State;

79 (n) This State favors life and has an interest in protecting the life of an unborn child and in
 80 upholding community standards of decency, which convenience abortion practices erode;

81 (o) "The Keep Roe Reversed Forever Act" is not a matter of Democrat verse Republican
 82 but a matter of this State taking back the power afforded to it and the people under the text of the
 83 Tenth Amendment and establishment clause of the First Amendment to regulate convenience
 84 abortion practices, as it sees fit; and

85 (p) In the instances where an unborn child recoils or kicks back at the convenience
 86 abortion provider who is trying to kill him or her, it is someone else's body that is recoiling and
 87 fighting back, not the mother's.

§16-2P-3.

Definitions.

1 (a) As used in this article:

2 (1) "Community standards of decency" means standards based on the reasonable
3 observer perspective that can be eroded by appeals to the prurient interest or the patently
4 offensive to the extent the appeals harm the general decency, safety, health, and welfare of the
5 community. Practices that promote licentiousness are antithetical to this standard.

6 (2) "Conception" means the fecundation of the ovum by the spermatozoa.

7 (3) "Convenience Abortion" means the same as that term "abortion" as defined in §16-2F-2
8 of this code. The term also means an elective or nontherapeutic abortion that means the act of
9 using or prescribing an instrument, medicine, drug, device, or another substance or means with
10 the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the
11 termination by those means will with reasonable likelihood cause the death of the unborn child.
12 This type of abortion promotes licentiousness and is non-secular, religious, and controversial. The
13 term simply means an abortion where the mother terminates the unborn child on the altar of
14 convenience. An act is not a convenience abortion and is a secular abortion if the act is performed
15 with the intent to:

16 (i) Save the life of the mother or resolve a medical emergency;

17 (ii) Save the life or preserve the health of the unborn child;

18 (iii) Remove a dead unborn child caused by spontaneous abortion;

19 (iv) Remove an ectopic pregnancy;

20 (v) Abort and remove an unborn child that is the result of rape or incest reported to a law
21 enforcement agency; or

22 (vi) Abort and remove an unborn child because of a fetal malformation that is incompatible
23 with the baby being born alive.

24 (4) "Emotional appeal" means a method of persuasion through sentiment, not logic,
25 designed to create an emotional response.

26 (5) "Medical emergency" means that condition which, on the basis of the physician's good
27 faith clinical judgment, so complicates the medical condition of a pregnant woman as to

28 necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will
29 create serious risk of substantial and irreversible impairment of a major bodily function.

30 (6) "Logical nexus" means at least some minimal, relevant, legitimate, important, or
31 rational connection. The term connotes a low-threshold standard.

32 (7) "Lemon test" means a three-prong test that was originally created by the United States
33 Supreme Court that is used to determine if government action is unconstitutional under the
34 establishment clause. The test requires that government action or a government policy:

35 (i) Have a valid secular purpose;

36 (ii) Not have the effect of advancing, endorsing, or inhibiting religion; and

37 (iii) Not foster excessive entanglement with a particular religion. Government action
38 violates the establishment clause and Section 3-15, Article III, of the West Virginia Constitution if it
39 fails to satisfy any of the three prongs.

40 (8) "Licentious or licentiousness" means lacking legal or moral restraints especially -
41 disregarding sexual restraints. The term includes conduct that is sexually deviant, perverted,
42 immoral, lewd, debauched or practices that promote promiscuity, that appeal to the prurient
43 interests, harm the innocence of children, or erode community standards of decency.

44 (9) "Non-secular" means religious, faith-based, not proven, predicated on naked
45 assertions, or emotional feelings, not self-evident objective fact.

46 (10) "Reasonable observer" a person of ordinary prudence who views a policy from an
47 objective standpoint in the context of the State's long-standing practices through the lens of self-
48 evident neutral, natural, and non-controversial transcultural morality and who is not desensitized
49 or blinded by the unexamined assumption of the superiority of our cultural moment.

50 (11) "Religion" means a set of unproven answers to the greater questions like "why are we
51 here," "what should we be doing as humans," "how do we get our identity," and "what happens
52 after death." The term means a closed system and group or community that is organized, full, and
53 provides a comprehensive code by which individuals may guide their daily activities. Religion

54 involves an ultimate concern or sincere belief and can be non-theistic or theistic.

55 (12) "Secular abortion" means the act of using or prescribing an instrument, medicine,
56 drug, device, or another substance or means with the intent to terminate the clinically diagnosable
57 pregnancy of a woman with knowledge that the termination by those means will with reasonable
58 likelihood cause the death of the unborn child, when carried out to:

59 (i) Save the life of the mother or resolve a medical emergency;

60 (ii) Save the life or preserve the health of the unborn child;

61 (iii) Remove a dead unborn child caused by spontaneous abortion;

62 (iv) Remove an ectopic pregnancy; or

63 (v) Abort and remove an unborn child that is the result of rape or incest reported to a law
64 enforcement agency.

65 (vi) Abort and remove an unborn child because of a fetal malformation that is incompatible
66 with the baby being born alive.

67 (13) "Secular humanism" means a faith-based worldview that is also referred to as
68 postmodern-western-individualistic moral relativism, expressive individualism, or anti-theism, and
69 is often the mirror opposite of theism. The term refers to a religion that worships man as the source
70 of all knowledge and truth. The term includes a belief system that is centered on the unproven
71 assumptions that there are no moral absolutes and no one moral doctrine should be used as the
72 superior basis for law and policy, except for the religious doctrines of secular humanism. The term
73 includes a series of unproven faith-based assumptions and naked assertions that suggest that
74 morality and truth are man-made conventions and that at the heart of liberty is man's ability to
75 define his own meaning of the universe. The term refers to a religion that tends to promote
76 licentiousness and attempts to justify practices that are inconsistent with the peace and safety of
77 the states. The term refers to the belief that man is merely a bundle of chemicals, animated pieces
78 of meat, or accidental particles, that nature is all there is, and that there is nothing after death. The
79 idea that life does not begin at conception and that convenience abortion is not immoral, or that a

80 convenience abortion is not murder is a doctrine that is inseparably linked to this religion. The term
81 refers to a religion that has many different denominational sects and is expressed in widely varying
82 ways.

83 (14) "Taxpayer standing" means the standing of a taxpayer to file a lawsuit against a
84 government actor that is directly or symbolically advancing a policy that violates the establishment
85 clause of the First Amendment of the United States Constitution or Section 3-15, Article III, of the
86 West Virginia Constitution, after the government actor actually or prospectively engaged in action
87 that potentially failed at least one prong of the Lemon test. A taxpayer must have a logical nexus to
88 a government actor's violation to assert this form of standing. A person who pays sales tax in this
89 state can successfully assert this form of standing before a court of competent jurisdiction.

90 (15) "Unborn child" means the offspring of human beings from conception until birth.

§16-2P-4. Civil Action Enforcement Pursuant to the Tenth Amendment and Establishment Clause of the First Amendment of the United States Constitution.

1 (a) Protecting Rights. - Pursuant to the powers conferred on this State under the Tenth
2 Amendment of the United States Constitution and pursuant to the establishment clause of the First
3 Amendment, this State shall exercise the right to determine the manner in which it will regulate and
4 convenience abortion practices, which are religious practices that promote licentiousness and are
5 inseparably linked to the religion of secular humanism.

6 (b) Civil Action For Injunctive Relief. - Pursuant to the establishment clause of the First
7 Amendment of the United States Constitution, the Tenth Amendment of the United States
8 Constitution, Section 3-15, Article III, of the West Virginia Constitution, and the State's narrowly
9 tailored compelling interest to uphold community standards of decency, if a federal government
10 actor attempts to enact or enforce a policy that aims to preempt or undo any restriction imposed by
11 this State on convenience abortion practices, the Attorney General or a person residing in this
12 state shall have taxpayer standing to file a civil action under this section in a court of competent
13 jurisdiction where they can seek:

- 14 (1) Injunctive relief,
- 15 (2) Declaratory relief;
- 16 (3) Attorney fees and costs; and
- 17 (4) Any other relief deemed appropriate by the court.

18 (c) Declaration Regarding Oath. - In seeking declaratory relief under subsection (b)
 19 subparagraph (2) of this section, a plaintiff may ask the presiding court to declare that the
 20 defendant violated their oath of office undertaken pursuant to clause 3 of Article VI of the United
 21 States Constitution in attempting to undo a restriction imposed by this State on convenience
 22 abortion practices by violating the establishment clause of the First Amendment and the Tenth
 23 Amendment.

24 (d) Non-Defense. - Emotional appeals, even really good ones, cannot serve as a valid
 25 defense to this section.

26 (e) Supplemental Jurisdiction. - If a person or the Attorney General files a civil suit in
 27 federal district court under 42 USC § 1983 against a federal actor for a violation described in
 28 section (b) of this section for a count under the First Amendment establishment clause or a count
 29 under the Tenth Amendment and also pleads a count under subsection (b) of this section, the
 30 presiding court may find that it has supplemental jurisdiction to hear the claim under subsection (b)
 31 of this section.

§16-2P-5. Construction.

- 1 (a) This article is constructed on the premise that:
- 2 (1) When life begins from the moment of conception until birth is a matter of religion;
- 3 (2) Convenience abortion practices and ideology are inseparably linked to the religion of
 4 secular humanism;
- 5 (3) An attempt by any of the three branches of the federal government to infringe upon this
 6 State’s right to regulate convenience abortion practices serves to establish a national religion,
 7 putting the religion of secular humanism over other religions and over non-religion in a manner that

8 violates the establishment clause of the First Amendment of the United States Constitution.

9 (4) This State has paramount jurisdiction to regulate convenience abortion under the Tenth
10 Amendment since convenience abortion practices are not protected anywhere in the United
11 States Constitution other than in the free exercise clause, which is not absolute;

12 (5) There is a long-standing American tradition and heritage that the States are permitted
13 to regulate licentious religious practices at the expense of the free exercise clause of the First
14 Amendment, which includes regulating convenience abortion practices that encourage
15 promiscuity and death;

16 (6) Convenience abortion practices promote licentiousness and attempt to justify practices
17 that are inconsistent with the peace and safety of the State;

18 (7) This State favors life and has an interest in protecting the life of an unborn child;

19 (8) There is a difference with a distinction between a secular abortion and a non-secular
20 convenience abortion from a legal perspective.

21 (b) Non-Construction. - This section is not constructed to:

22 (1) Allow for discrimination against anyone who believes or disbelieves in the religious
23 morality of convenience abortion doctrine or practices.

24 (2) Draw the line when convenience abortion can take place, if ever, from the moment of
25 conception until birth for that matter is addressed in a different section of this State’s code.

26 (3) Prevent the subsequent finding that an unborn child in the womb is a person from the
27 moment of conception that must be afforded all of the protections guaranteed by the Fourteenth
28 Amendment.

§16-2P-6. Effective date.

1 This act shall go into effect immediately upon passage.

NOTE: The purpose of this bill is to establish that the Establishment Clause of the First Amendment of the United States Constitution is the underlying legal basis that supports Amendment No 1. of the West Virginia Constitution’s prohibition of directly or symbolically endorsing convenience abortions or from the state providing federal or state taxpayer dollars to facilities that provide convenience abortions.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.