

The D.C. Abortion Ban Would Impose an Unconstitutional Abortion Ban on Women Who Have No Representation in Congress

The D.C. Abortion Ban, H.R. 3803, introduced by Representative Trent Franks (R-AZ), is an extremely dangerous bill that threatens women's health and lives, and ignores women's individual – sometimes dire – circumstances by banning abortions in D.C. at twenty weeks' post-fertilization. This ban is a direct attack on the constitutional right to abortion established in *Roe v. Wade*, and tramples on the rights of D.C. citizens. Decisions about adoption, when to end a pregnancy, or when to raise a child are best left to a woman to make with her family and her doctor. The D.C. Abortion Ban would deny D.C. women the right to make such an extremely personal medical decision.

The D.C. Abortion Ban Ignores A Woman's Individual Circumstances and Her Health

The D.C. Abortion Ban provides only an extremely limited exception, allowing an abortion after 20 weeks only when it is necessary to save a woman's life. This narrow exception does not include situations where a doctor determines an abortion is medically necessary to prevent severe and irreversible damage to a woman's health. The exception also specifically prevents doctors from performing an abortion even if the physician believes there is a risk the woman may commit suicide. Moreover, the D.C. Abortion Ban fails to provide an exception to survivors of rape and incest, and there are no exceptions for severe fetal anomalies.

The D.C. Abortion Ban Is Unconstitutional

The D.C. Abortion Ban restricts almost all abortions at twenty weeks' post-fertilization, in direct violation of Supreme Court precedence establishing that states cannot ban abortions prior to viability.¹ The Supreme Court has also made it clear that, even after viability, an abortion ban must include an exception to protect a woman's health.² The D.C. Abortion Ban provides no health exception, thereby adding another reason that this ban is unconstitutional.

The D.C. Abortion Ban Would Impose Severe Criminal Penalties on Physicians and Threaten Physicians with Costly Litigation Proceedings

Physicians who provide an abortion in violation of the ban would face up to two years of imprisonment or pay a heavy fine (or both). The D.C. Abortion Ban would also expose physicians who perform medically necessary abortions to significant civil litigation, allowing the woman who received the abortion, the father, or the woman's parents (if she is a minor) to sue the physician for damages.

Additionally, the D.C. Abortion Ban would allow a "qualified plaintiff" to sue for an injunction, stopping the physician from providing any future abortions banned under the bill. The D.C. Abortion Ban defines a "qualified plaintiff" to include a woman who received an abortion banned under the bill, the District of Columbia U.S. attorney, and, "any person who is the spouse, parent, sibling or guardian of, or a current or former licensed health care provider of" the woman. This means that an abusive spouse, estranged sibling or parent, or even the woman's

¹ See, e.g., *Planned Parenthood of S.E. Pa. v. Casey*, 505 U.S. 833, 846 (1992).

² *Roe v. Wade*, 410 U.S. 113, 164–65 (1973).

dentist could prevent a doctor from performing any future abortions that violate the ban, even those that are necessary to preserve a woman's health.

The D.C. Abortion Ban Infringes on D.C. Autonomy

Allowing Congress to pass an unconstitutional abortion ban that applies only to D.C. citizens tramples on D.C.'s local autonomy. In pushing this unconstitutional legislation, its sponsors have completely ignored D.C.'s popularly-elected governing body, a body where D.C. citizens' interests are represented by officials that D.C. citizens themselves elect. The sponsors have also ignored the fact that D.C. citizens have no voting representation in Congress, and that, if this bill were to pass, it would impose an unconstitutional abortion ban on a wholly unrepresented population.