

FACT SHEET

2013 State Level Abortion Restrictions at Mid-Year: An Extreme Overreach into Women's Reproductive Health Care

June 2013

This year marks the 40th anniversary of Roe v. Wade, the landmark Supreme Court ruling that affirmed a woman's right to a safe and legal abortion. Yet, anti-abortion state politicians continue to relentlessly attack this right, in the hopes of overturning Roe and preventing women from obtaining abortions. In the first 3 months of 2013, state lawmakers introduced 326 restrictions on abortion, including outright bans. These state restrictions are a dangerous overreach into women's personal medical decisions.

States Are Banning Abortion Outright, in an Attempt to Overturn Roe v. Wade

So far in 2013, two states (Arkansas and North Dakota) have passed extreme and outright bans on abortion. North Dakota's law prohibits abortion at six weeks, before most women even know they are pregnant, and does not allow abortions in cases of rape or incest.¹ The Arkansas law bans abortion at twelve weeks with only narrow exceptions.²

These laws are blatantly unconstitutional attempts to overturn *Roe v. Wade* and a woman's right to a safe and legal abortion.³ The Arkansas law has been challenged in federal court, and the judge has prevented the law from going into effect as the lawsuit proceeds.⁴ In her decision, the judge said that the law "impermissibly infringes a woman's Fourteenth Amendment right to chose [sic] to terminate a pregnancy before viability."⁵

States Are Banning Abortion Later in Pregnancy, Ignoring an Individual Woman's Particular Circumstances

In addition to the bans on abortion early in pregnancy, Arkansas and North Dakota also passed laws in 2013 that ban abortion at or beyond twenty weeks' gestation.⁶ The North Dakota law does not have exceptions for rape or incest, and the Arkansas law allows only limited exceptions.

These unconstitutional laws⁷ – which join 6 other recently passed, similar state laws⁸ – deprive a woman of her ability to make an extremely personal, medical decision. Every pregnancy is different. These laws take the decision away from a woman and her doctor, and hand it over to politicians.

States Are Attempting to Establish "Fetal Personhood" In Order to Ban Abortion, Without Exception, and Restrict Access to Other Reproductive Health Services

So far in 2013, one state – North Dakota – has passed a resolution to put so-called "fetal personhood" on the 2014 ballot.⁹ This means that North Dakota voters will decide next November whether to define a person as a "human being at any stage of development."

A fetal personhood measure has dangerous and far-reaching consequences. It would ban all abortion, without exception. It would also threaten a wide range of reproductive health care services, including many common forms of contraception, in vitro fertilization, and medical treatment of pregnant women.¹⁰ These unconstitutional measures are a direct challenge to *Roe v. Wade* and are so extreme that voters have rejected them at every opportunity.¹¹

States Are Requiring Women to Undergo Medically Unnecessary, Physically Invasive Ultrasounds Before Obtaining an Abortion

In 2013 so far, one state – Indiana – enacted a provision requiring a woman to undergo an ultrasound before she can obtain an abortion.¹² In one state – Wisconsin – a mandatory ultrasound requirement has passed the legislature and is awaiting action by the governor.¹³

Indiana joins 8 other states that require an abortion provider to perform an ultrasound on each woman seeking an abortion.¹⁴ These laws subject a woman seeking an abortion to a medically unnecessary, physically invasive procedure. Requiring doctors to perform ultrasounds without regard for the circumstances or the patient's wishes impairs the doctor-patient relationship and violates principles of medical ethics. Mandatory ultrasound laws represent a profound disrespect for women's decision making ability and the clinical judgment of doctors.

States Are Attempting to Regulate Abortion Providers Out of Existence

So far in 2013, two state legislatures (Alabama and North Dakota) passed targeted regulations of abortion providers.¹⁵ Both states passed laws requiring abortion providers to have admitting privileges at hospitals. These laws give hospitals veto power over doctors, and are modeled after one passed in 2012 in Mississippi, where doctors who provide abortions at the sole abortion clinic in the state were denied privileges at every hospital to which they applied.¹⁶ Alabama also passed additional medically unnecessary and excessively burdensome regulations on abortion providers. These laws are meant to drive abortion providers out of practice, and are a back door ban on abortion. In North Dakota, there is only one abortion clinic in the state, which is now in jeopardy of closing.

States Are Banning Insurance Coverage of Abortion, Taking Away Benefits Women Currently Have and Jeopardizing Women's Health

In 2013 so far, two states (Arkansas and Virginia) passed laws banning insurance coverage of abortion in the exchanges that will be established in the state as part of implementing the health care law.¹⁷ In one additional state – Pennsylvania – an abortion insurance coverage ban has passed the legislature and is awaiting action by the governor.¹⁸

Twenty-one states now prevent women from obtaining insurance coverage for abortion services.¹⁹ Bans on insurance coverage of abortion represent a radical departure from the status quo. Most Americans with employer-based insurance currently have coverage for abortion,²⁰ so these bans on coverage will result in a woman losing benefits she currently has. Bans on insurance coverage of abortion are also dangerous to women's health. A woman with a serious, permanent, and even life-shortening health condition will not be able to obtain insurance coverage for a medically necessary abortion. For example, a woman for whom continuing the pregnancy will result in permanent damage to her health, such as damage to her heart, lungs, or kidneys, or a pregnant woman who is diagnosed with cancer and must undergo chemotherapy will not have insurance coverage for these medically necessary abortions.

States Are Limiting Women's Access to Non-Surgical Abortion

Two states so far in 2013 (Alabama and Mississippi) enacted laws that prohibit the use of telemedicine for non-

surgical abortion.²¹ Eight states now ban the use of telemedicine for non-surgical abortion.²² The use of telemedicine is an increasingly routine part of medical care that helps to improve access for individuals in rural areas who would not otherwise be able to easily and consistently access health services. Abortion providers similarly are trying to use telemedicine to provide access to medication abortion. Yet, these laws are designed to end the use of telemedicine for non-surgical abortion, particularly harming women who live in rural areas where abortion providers are few and far between.

States Are Enacting Longer Mandatory Delay Requirements

In 2013 so far, one state – South Dakota – imposed an onerous new requirement on women seeking an abortion.²³ South Dakota already imposes a 72-hour mandatory delay before a woman may obtain an abortion, one of the longest mandatory delays in the country.²⁴ The new law prohibits counting weekends or holidays in that 72 hour period, which could result in a woman waiting up to six days between her first consultation and obtaining the procedure.

Twenty-six states require a woman to wait a specific amount of time before she can obtain an abortion.²⁵ Such mandatory delays are an additional burden for women, especially women who must struggle to get time off from work or to pay for needless child-care costs, and rural women, who often have to travel hours to reach the closest health care provider.

States Are Enacting Harmful Sex Selective Abortion Bans

So far in 2013, two states (Kansas and North Dakota) have enacted bans on abortion if the provider knows the woman is obtaining the abortion for purposes of sex selection.²⁶

Five states now ban sex-selective abortions, and one state bans abortions for reasons of sex and race selection.²⁷ Although proponents of these bans try to cloak their anti-abortion agenda in social justice rhetoric, claiming that they are motivated by concerns about women's equality and racial injustice, in reality, these bans only harm women's health by further limiting their access to reproductive care and undermining the patient-provider relationship. The laws unconstitutionally ban abortion and require providers to subject women to additional scrutiny based on nothing more than stereotypes about racial and ethnic preferences for sons.²⁸

Conclusion

As the attacks on women's access to reproductive health care continue unabated, the ability of women to obtain the health care they need has never been at greater risk. State politicians need to stop playing politics with women's health.

- 1 H.B. 1456, 63d Leg. Assemb., Reg. Sess. (N.D. 2013) (to be codified as N.D. CENT. CODE. § 14-02.1 (2013)).
- 2 S.B. 134, 89th Gen. Assemb., Reg. Sess. (ARK. 2013) (to be codified as ARK. CODE ANN. § 20-16-13 (2013)).
- 3 The Supreme Court has said states may not ban abortion prior to viability. See, e.g., *Planned Parenthood of S.E. Pa. v. Casey*, 505 U.S. 833, 846 (1992).
- 4 See Press Release, Center for Reproductive Rights, Federal Judge Blocks Arkansas 12-Week Abortion Ban (May 17, 2013), <http://reproductiverights.org/en/press-room/federal-judge-blocks-arkansas-12-week-abortion-ban>.
- 5 *Edwards v. Beck*, No. 4:13CV00224 SWW, 2013 WL 2302323, at *5 (W.D. Ark. May 23, 2013).
- 6 H.B. 1037, 89th Gen. Assemb., Reg. Sess. (ARK. 2013) (to be codified as ARK. CODE ANN. § 20-16-1305 (2013)); H.B. 2368, 63d Leg. Assemb., Reg. Sess. (N.D. 2013) (to be codified as N.D. CENT. CODE. §§ 14-02.1-01, 14.02.1-02, 14.02.1-07 (2013)).
- 7 In addition to prohibiting states from banning abortion prior to viability, the Supreme Court has also said that states may not draw a line at a particular gestational age to establish viability because viability is a matter of judgment of the attending physician. See, e.g., *Central Mo. v. Danforth*, 428 U.S. 52, 64–65 (1976). Although a state may ban abortion after viability, any such ban must make an exception when a woman's life or health is at risk. *Roe v. Wade*, 410 U.S. 113, 164–65 (1973).
- 8 *State Policies in Brief: State Policies on Later Abortions*, GUTTMACHER INSTITUTE, June 1, 2013, http://www.guttmacher.org/statecenter/spibs/spib_PLTA.pdf.
- 9 N.D. S. Con. Res. 4009, 63d Leg. Assemb., Reg. Sess. (2013). In 2013, Kansas adopted a "fetal personhood" statement, but it currently has no legal effect. H.B. 2253, 85th Leg., Reg. Sess. (K.S. 2013) (to be codified as KAN. STAT. ANN. §§ 40-2246, 65-6701, 65-6703, 65-6710, 76-3308, 79-32,117, 79-32,182b, 79-32,195, 79-32,195, 79-32,261, 79-3606 (2013)).
- 10 *Rights at Risk: The Truth About Prenatal Personhood*, CENTER FOR REPRODUCTIVE RIGHTS, 2012, http://reproductiverights.org/sites/crr.civicactions.net/files/documents/crr_PersonhoodPapers_BriefingPaper.pdf.
- 11 Mississippi voters rejected a "fetal personhood" measure in 2011, while Colorado voters have twice overwhelmingly voted down such measures, once in 2008 and again in 2010. See, e.g., *Mississippi "Personhood Amendment" Fails at Polls*, CBS NEWS, Nov. 8, 2011, http://www.cbsnews.com/8301-250_162-57321126/mississippi-personhood-amendment-fails-at-polls/.
- 12 S.B. 371, 118th Gen. Assemb., 1st Reg. Sess. (IND. 2013) (to be codified as IND. CODE. § 16-34-2-1.1 (2013)).
- 13 S.B. 206, 2013 Reg. Sess. (Wis. 2013).
- 14 *State Policies in Brief: Requirements for Ultrasound*, GUTTMACHER INSTITUTE, June 1, 2013, https://www.guttmacher.org/statecenter/spibs/spib_RFU.pdf.
- 15 H.B. 57, 2013 Reg. Sess. (Ala. 2013); S.B. 2305, 63d Leg. Assemb., Reg. Sess. (N.D. 2013) (to be codified as N.D. CENT. CODE. §§ 14-02.1-04(1) (2013)).
- 16 Associated Press, *Legal Woes for Mississippi's Only Abortion Clinic*, USA TODAY, Jan. 11, 2013, <http://www.usatoday.com/story/news/nation/2013/01/11/abortion-mississippi-women-clinic/1828289>. A judge prevented the law from going into effect while the lawsuit proceeds. See Press Release, Center for Reproductive Rights, Federal Judge Blocks All Enforcement of Mississippi Admitting Privileges Requirement (Apr. 15, 2013), <http://reproductiverights.org/en/press-room/federal-judge-blocks-all-enforcement-of-mississippi-admitting-privileges-requirement>.
- 17 H.B. 1100, 89th Gen. Assemb., Reg. Sess. (Ark. 2013) (to be codified as ARK. CODE. § 23.79.1 (2013)); H.B. 1900, 2013 Reg. Sess. (Va. 2013) (to be codified as VA. CODE ANN. § 38.2-3457 (2013)).
- 18 H.B. 818, 2013 Reg. Sess. (Pa. 2013).
- 19 *State Bans on Insurance Coverage of Abortion Are Sweeping the Nation, Endangering Women's Health and Taking Health Benefits Away from Women*, NATIONAL WOMEN'S LAW CENTER, May 13, 2013, <http://www.nwlc.org/resource/state-bans-insurance-coverage-abortion-are-sweeping-nation-endangering-women%E2%80%99s-health-and-t>.
- 20 *Memo on Private Insurance Coverage of Abortion*, GUTTMACHER INSTITUTE, Jan. 19, 2011, <http://www.guttmacher.org/media/inthenews/2011/01/19/index.html>.
- 21 H.B. 57, 2013 Reg. Sess. (Ala. 2013); S. B. 2795, 128th Leg., Reg. Sess. (Miss. 2013).
- 22 *State Policies in Brief: Medication Abortion*, GUTTMACHER INSTITUTE, June 1, 2013, http://www.guttmacher.org/statecenter/spibs/spib_MA.pdf.
- 23 H.B. 1237, 88th Leg. Assemb. (S.D. 2013).
- 24 S.D. CODIFIED LAWS § 34-23A-56 (2011).
- 25 *State Policies in Brief: Counseling and Waiting Periods for Abortion*, GUTTMACHER INSTITUTE, June 1, 2013, www.guttmacher.org/statecenter/spibs/spib_MWPA.pdf.
- 26 H.B. 2253, 2013 Leg., Reg. Sess. (Kan. 2013) (to be codified as KAN. STAT. ANN. 2012 SUPP. 40-2246, 65-6701, 65-6703, 65-6709, 65-6710, 76-3308, 79-32,117, 79-32,182b, 79-32,195, 79-32,261, 79-3606); H.B. 1305, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013) (to be codified as N.D. CENT. CODE. § 14-02.1-02 (2013)). North Dakota's statute also prohibits a woman from seeking an abortion because of a diagnosed or potential genetic abnormality.
- 27 In addition to Kansas and North Dakota, the states are Arizona, Illinois, Oklahoma, and Pennsylvania. ARIZ. REV. STAT. ANN. § 13-3603.02 (2011) (West); 720 ILL. ANN. STAT. 510/6(8); OKL. STAT. ANN. tit. 63, § 1-7312 (West 2012); 18 PA. C.S.A. §3204.
- 28 See *Whren v. United States*, 517 U.S. 806, 813 116 S. Ct. 1769, 1770, 135 L. Ed. 2d 89 (1996) (noting that "the Constitution prohibits selective enforcement of the law based on considerations such as race.").