

FACT SHEET

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

September 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 6 months of 2013, state lawmakers enacted 43 restrictions on abortion, including outright bans.¹ This is the second highest number of enacted restrictions at the mid-year mark, and equal to the total number of restrictions enacted in 2012.² 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.³ The Arkansas law bans abortion at twelve weeks with only narrow exceptions.⁴

These laws are blatantly unconstitutional attempts to overturn Roe v. Wade and a woman's right to a safe and legal abortion.⁵ Both the Arkansas and North Dakota laws have been challenged in court, and judges have prevented them from going into effect while the cases move forward. The judge in Arkansas said that the law "impermissibly infringes a woman's Fourteenth Amendment right to chose [sic] to terminate a pregnancy before viability."⁶ In North Dakota, the judge said that the law "is a blatant violation of the constitutional guarantees afforded to all women."⁷

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.⁸ Texas followed suit, passing a ban on abortion at 20 weeks as part of its omnibus anti-abortion bill.⁹ The North Dakota and Texas laws do not have exceptions for rape or incest, and none of the bills allows an abortion after 20 weeks when the fetus is not viable and personal circumstances are such that a woman should not continue the pregnancy.

These unconstitutional laws¹⁰ – which join 6 other recently passed, similar state laws¹¹ – 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.¹² 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.¹³ These unconstitutional measures are a direct challenge to *Roe v. Wade* and are so extreme that voters have rejected them at every opportunity.¹⁴

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

In 2013 so far, two states – Indiana and Wisconsin – enacted a provision requiring a woman to undergo an ultrasound before she can obtain an abortion.¹⁵

These two states join 8 others to require an abortion provider to perform an ultrasound on each woman seeking an abortion.¹⁶ 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, seven states (Alabama, Indiana, North Carolina, North Dakota, Ohio, Texas, and Wisconsin) have passed targeted regulations of abortion providers.¹⁷

- Alabama, North Dakota, Texas, and Wisconsin 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.¹⁸ The Alabama, North Dakota, and Wisconsin laws have been challenged in court, and all have been prevented from going into effect as the cases move forward.¹⁹ In the Alabama and Wisconsin cases, federal judges expressed concern about clinics closing and the creation of a “patchwork system where constitutional rights are available in some states but not others.”²⁰ In the North Dakota case, a state judge found that the law would “deprive women of fundamental constitutional rights. . . .”²¹
- The Ohio legislature passed a law that prohibits public hospitals from entering into a transfer agreement with abortion providers, who are required to have such transfer agreements in order to provide abortions in the state.
- Alabama, Indiana, North Carolina, and Texas also passed additional medically unnecessary and excessively burdensome regulations on abortion providers.

This brings to 28 the number of states that regulate abortion providers beyond what is necessary to ensure patient safety.²² These laws are meant to drive abortion providers out of practice, and are a back door ban on abortion.

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

In 2013 so far, four states (Arkansas, North Carolina, Pennsylvania, and Virginia) have 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.²³

Twenty-three states now prevent women from obtaining a comprehensive health plan that includes coverage of abortion services.²⁴ 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,²⁵ 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.

At least one state has also targeted insurance coverage for low-income women who receive coverage through the Medicaid program. The Iowa legislature passed a measure that requires the governor's signature before a low-income woman enrolled in Medicaid can receive reimbursement for an abortion that is covered under the program.²⁶ This means the governor will have to personally approve each woman's case, giving him ultimate veto power over abortion coverage for Iowa women on Medicaid, including a woman whose life is in danger or a woman who is pregnant due to rape.

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

Seven states so far in 2013 (Alabama, Indiana, Louisiana, Mississippi, Missouri, North Carolina, and Texas) enacted laws that prohibit the use of telemedicine for non-surgical abortion.²⁷

Fourteen states now ban the use of telemedicine for non-surgical abortion.²⁸ 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.²⁹ 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.³⁰ 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.³¹ 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, three states (Kansas, North Carolina, and North Dakota) have enacted bans on abortion if the provider knows the woman is obtaining the abortion for purposes of sex selection.³² The North Dakota law also bans abortion if the woman is obtaining it because of a fetal anomaly, and is being challenged in federal court.

Six states now ban sex-selective abortions, and one state bans abortions for reasons of sex and race selection.³³ 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.³⁴

States are Allowing Individuals and Institutions to Refuse to Participate in Abortion

One state – North Carolina – passed new provisions allowing any health care provider and any health care institution to refuse to participate in an abortion.³⁵

Such refusals allow the religious, ethical, or moral beliefs of providers and institutions to trump the health care needs of patients. Women denied needed services are forced to bear the additional costs, delays, and health risks incurred by going elsewhere or never receiving the services. These burdens fall most heavily on poor women and those living in rural areas, but the reduction of available health services adversely affect all women in need of reproductive health care.³⁶

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 *Laws Affecting Reproductive Health and Rights: State Trends at Midyear, 2013*, GUTTMACHER INSTITUTE, <https://www.guttmacher.org/statecenter/updates/2013/statetrends2013.html>.
- 2 *Id.*
- 3 H.B. 1456, 63d Leg. Assemb., Reg. Sess. (N.D. 2013) (to be codified as N.D. CENT. CODE. § 14-02.1 (2013)).
- 4 S.B. 134, 89th Gen. Assemb., Reg. Sess. (Ark. 2013) (to be codified as ARK. CODE ANN. § 20-16-13 (2013)).
- 5 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).
- 6 *Edwards v. Beck*, No. 4:13CV00224 SWW, 2013 WL 2302323, at *5 (W.D. Ark. May 23, 2013).
- 7 *MKB Mgmt. Corp., v. Burdick*, No. 1:13-cv-071, at *21 (D. N.D. July 22, 2013) (order granting preliminary injunction).
- 8 H.B. 1037, 89th Genn. 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)).
- 9 H.B. 2, 83d Leg. Sess., 2d Spec. Sess. (Tex. 2013).
- 10 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).
- 11 *State Policies in Brief: State Policies on Later Abortions*, GUTTMACHER INSTITUTE, Aug. 1, 2013, http://www.guttmacher.org/statecenter/spibs/spib_PLTA.pdf.
- 12 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. (Kan. 2013).
- 13 *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.
- 14 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/.
- 15 S.B. 371, 118th Gen. Assemb., 1st Reg. Sess. (Ind. 2013) (to be codified as IND. CODE. § 16-34-2-1.1 (2013)); S.B. 206, 2013 Reg. Sess. (Wis. 2013).
- 16 *State Policies in Brief: Requirements for Ultrasound*, GUTTMACHER INSTITUTE, Aug. 1, 2013, https://www.guttmacher.org/statecenter/spibs/spib_RFU.pdf.
- 17 H.B. 57, 2013 Reg. Sess. (Ala. 2013); S.B. 371, 118th Gen. Assemb., 1st Reg. Sess. (Ind. 2013); S.B. 353, Gen. Assemb., 2013 Sess. (N.C. 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)); H.B. 59, 130th Gen. Assemb., Reg. Sess. (Ohio 2013); H.B. 2, 83d Leg. Sess., 2d Spec. Sess. (Tex. 2013); S.B. 206, 2013 Reg. Sess. (Wis. 2013).
- 18 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>.
- 19 *Planned Parenthood v. Bentley*, No. 2:13cv405-MHT (M.D. Ala. 2013); *MKB Management Corp d/b/a Red River Women's Clinic, Tammi Kromenaker, Kathryn Eggleston, M.D., v. Birch Burdick and Terry Dwelle, M.D.*, No. 09-2011-CV-02205 (E.C.D. N.D. 2013); *Planned Parenthood v. Hollen*, No. 13-cv-465-wmc (W.D. Wis. 2013).
- 20 *Planned Parenthood v. Bentley*, No. 2:13cv405-MHT, at *21 (M.D. Ala. 2013); *Planned Parenthood v. Hollen*, No. 13-cv-465-wmc, at *18, n.12 (W.D. Wis. 2013) (both citing *Jackson Women's Health Org. v. Currier*, 2013 WL 1624365, at *5 (S.D. Miss. Apr. 15, 2013)).
- 21 *MKB Management Corp d/b/a Red River Women's Clinic, Tammi Kromenaker, Kathryn Eggleston, M.D., v. Birch Burdick and Terry Dwelle, M.D.*, No. 09-2011-CV-02205, at *12 (E.C.D. N.D. 2013).
- 22 *State Policies in Brief: Targeted Regulation of Abortion Providers*, GUTTMACHER INSTITUTE, Aug. 1, 2013, http://www.guttmacher.org/statecenter/spibs/spib_TRAP.pdf.
- 23 H.B. 1100, 89th Gen. Assemb., Reg. Sess. (Ark. 2013) (to be codified as ARK. CODE. § 23.79.1 (2013)); S.B. 353, Gen. Assemb., 2013 Sess. (N.C. 2013); H.B. 818, 2013 Reg. Sess. (Pa. 2013); H.B. 1900, 2013 Reg. Sess. (Va. 2013) (to be codified as VA. CODE ANN. § 38.2-3457 (2013)).
- 24 *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, Aug. 5, 2013, <http://www.nwlc.org/resource/state-bans-insurance-coverage-abortion-are-sweeping-nation-endangering-women%E2%80%99s-health-and-t>.
- 25 *Memo on Private Insurance Coverage of Abortion*, GUTTMACHER INSTITUTE, Jan. 19, 2011, <http://www.guttmacher.org/media/inthenews/2011/01/19/index.html>.
- 26 S.F. 446, 85th Gen. Assemb., Reg. Sess. (Iowa 2013).
- 27 H.B. 57, 2013 Reg. Sess. (Ala. 2013); S.B. 371, 2013 1st Reg. Sess. (Ind. 2013); S.B. 90, 2013 Reg. Sess. (La. 2013); S. B. 2795, 128th Leg., Reg. Sess. (Miss. 2013); H.B. 400, 97th Gen. Assemb., 1st Reg. Sess. (Mo. 2103); S.B. 353, Gen. Assemb., 2013 Sess. (N.C. 2013); H.B. 2, 83d Leg. Sess., 2nd Spec. Sess. (TEX. 2013).
- 28 *State Policies in Brief: Medication Abortion*, GUTTMACHER INSTITUTE, Aug. 1, 2013, http://www.guttmacher.org/statecenter/spibs/spib_MA.pdf.
- 29 H.B. 1237, 88th Leg. Assemb. (S.D. 2013).
- 30 S.D. CODIFIED LAWS § 34-23A-56 (2011).
- 31 *State Policies in Brief: Counseling and Waiting Periods for Abortion*, GUTTMACHER INSTITUTE, Aug. 1, 2013, www.guttmacher.org/statecenter/spibs/spib_MWPA.pdf.
- 32 H.B. 2253, 2013 Leg., Reg. Sess. (Kan. 2013); S.B. 353, Gen. Assemb., 2013 Sess. (N.C. 2013); H.B. 1305, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013) (to be codified as N.D. CENT. CODE. § 14-02.1-02 (2013)).
- 33 In addition to Kansas, North Carolina, 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.
- 34 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.”).
- 35 S.B. 353, Gen. Assemb., 2013 Sess. (N.C. 2013).
- 36 *Health Care Refusals Harm Patients: The Threat to Reproductive Health Care*, NATIONAL WOMEN'S LAW CENTER, Jan. 25, 2013, <http://www.nwlc.org/resource/health-care-refusals-harm-patients-threat-reproductive-health-care>.