

2011 State Level Abortion Restrictions: A Dangerous Overreach into Women's Reproductive Health Care

Although women's access to abortion care has been under attack for years, the results of the 2010 midterm elections allowed new anti-choice policymakers unprecedented success in their ongoing effort to undermine a woman's right to an abortion.¹ In 2011, states enacted a record number of new restrictions limiting access to abortion – 92 provisions in 24 states, almost triple the previous record.² These include requirements that women undergo medically unnecessary, invasive ultrasounds; bans on abortion earlier in pregnancy than current law allows; onerous mandatory delay requirements; and bans on insurance coverage of abortion. These new obstacles to abortion represent a dangerous overreach into women's reproductive health care and personal medical decisions.

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

In 2011, five states (Arizona, Florida, Kansas, North Carolina, and Texas) enacted provisions requiring a woman to undergo an ultrasound before she can obtain an abortion, which for most women will mean submitting to an invasive transvaginal ultrasound. Two of these laws – North Carolina and Texas – go even further and require providers to show and describe the ultrasound image to the woman. A federal court issued a preliminary injunction against the North Carolina law, preventing it from going into effect.³ As the court recognized, "[T]hese provisions are likely to harm the psychological health of the very group the state purports to protect."⁴

There are now seven states that require an abortion provider to perform an ultrasound on each woman seeking an abortion.⁵ These laws subject a woman seeking an abortion to a

¹ The number of states with fully anti-choice governments – where both the governor and a majority of the legislature are anti-choice – increased from 10 to 15 after the 2010 elections. Press Release, NARAL Pro-Choice America, Report Shows New Legislative Landscape Could Undermine Women's Access to Legal Abortion and Other Reproductive-Health Care (Jan. 14, 2011),

http://www.prochoiceamerica.org/media/press-releases/2011/pr01142011_who-decides.html.

² *States Enact Record Number of Abortion Restrictions in 2011*, GUTTMACHER INSTITUTE, Jan. 5, 2012, <http://www.guttmacher.org/media/inthenews/2012/01/05/endofyear.html>.

³ *Stuart v. Huff*, No. 1:11CV804, 2011 WL 6330668 (M.D.N.C. Dec. 19, 2011). The Texas law was also challenged and a district court judge issued a preliminary injunction in 2011. *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 806 F.Supp.2d 942 (W.D. Tex. 2011). Unfortunately, the Fifth Circuit disagreed, vacated the preliminary injunction, and sent the case back to the district court. *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570 (5th Cir. 2012). On remand, the district court judge acknowledged that he was bound to defer to the Fifth Circuit's decision, but expressed his disagreement and belief that the law is an unconstitutional "attempt by the Texas Legislature to discourage women from exercising their constitutional rights." *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, No. A-11-CA-486-SS, 2012 WL 373132, at *5 (W.D. Tex. Feb. 6, 2012).

⁴ *Stuart*, 2011 WL 6330668, at *5.

⁵ *Requirements for Ultrasound*, GUTTMACHER INSTITUTE Mar. 1, 2012, http://www.guttmacher.org/statecenter/spibs/spib_RFU.pdf.

medically unnecessary, 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 decisionmaking and the clinic judgment of doctors.

States Are Banning Abortion Altogether Earlier in Pregnancy Than Allowed, Ignoring an Individual Woman's Particular Circumstances

In 2011, legislators in five states (Alabama, Idaho, Indiana, Kansas, and Oklahoma) enacted provisions that ban abortion at or beyond twenty weeks' gestation, with only the most narrow exceptions. A similar ban passed the Minnesota legislature but was vetoed by Minnesota Governor Mark Dayton. These new, blatantly unconstitutional laws⁶ – which now exist in six states – 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 Enacting Onerous New Mandatory Delay Requirements

In 2011, three states (North Carolina, South Dakota, and Texas) enacted requirements that a woman wait a specified amount of time before receiving an abortion. South Dakota's law went as far as to require that women wait 72 hours – the longest mandatory delay in the nation – as well as receive counseling from an anti-choice pregnancy center. A federal district court judge has issued a preliminary injunction preventing the South Dakota law from going into effect. As the court recognized, "Forcing a woman to divulge to a stranger at a pregnancy help center the fact that she has chosen to undergo an abortion humiliates and degrades her as a human being."⁷ In addition, the court recognized that the 72 hour waiting period is likely unconstitutional because it so significantly burdens a woman's access to abortion.

Twenty-six states now require a woman to wait a specific amount of time before she can obtain an abortion.⁸ 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.

⁶ 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). 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).

⁷ *Planned Parenthood Minnesota, North Dakota, South Dakota v. Daugaard*, 799 F.Supp.2d 1048, 1060 (D.S.D. 2011).

⁸ *Counseling and Waiting Periods for Abortion*, GUTTMACHER INSTITUTE, Mar. 1, 2012, http://www.guttmacher.org/statecenter/spibs/spib_MWPA.pdf.

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

In 2011, eight states passed laws banning insurance coverage of abortion. Three of those states (Kansas, Nebraska, and Utah) ban coverage in *all* private insurance plans offered in the state. Five states (Florida, Idaho, Indiana, Ohio, and Virginia) ban coverage in the exchanges that will be established in the state as part of implementing the federal health care law. One state (Oklahoma) clarified that its abortion insurance coverage ban applies to the exchanges and narrowed it so that victims of rape and incest will no longer be able to obtain insurance coverage of abortion.

Sixteen states now prevent women from obtaining insurance coverage for abortion services.⁹ 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,¹⁰ 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.

My Health is Not Up for Debate!™

As the attacks on women's access to reproductive health care continue unabated, the ability for women to obtain the health care they need has never been at greater risk. It is time to stop this dangerous overreach into women's lives. Visit www.nwlc.org/notupfordebate to join the National Women's Law Center's campaign and tell politicians to stop playing politics with women's health.

⁹ See *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, Mar. 2, 2012, <http://www.nwlc.org/resource/state-bans-insurance-coverage-abortion-are-sweeping-nation-endangering-women%E2%80%99s-health-and-t>.

¹⁰ *Memo on Private Insurance Coverage of Abortion*, GUTTMACHER INSTITUTE, Jan. 19, 2011, <http://www.guttmacher.org/media/inthenews/2011/01/19/index.html>.