NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

FACT SHEET

S. 1553, A Nationwide Abortion Ban, Would Allow Politicians, Not Women and their Health Care Providers, to Make Personal Medical Decisions

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S. 1553 would impose a nationwide ban on abortions at twenty weeks.[1] This bill cruelly ignores a woman's individual circumstances, threatens her health, and takes an extremely personal medical decision away from a woman and her health care provider. Politicians are not medical experts. They should stay out of the exam room and stop meddling in women's health.

S. 1553 Would Deprive Women of the Ability to Make An Extremely Personal Medical Decision

S. 1553 ignores the many reasons a woman may need an abortion after twenty weeks. Each woman's situation is different, and this bill would take away a woman's ability to make the decision whether to continue a pregnancy based on her own real life circumstances. No one should deny a woman the ability to make her own decisions in consultation with those she trusts the most.

S. 1553 Is Unconstitutional

S. 1553 imposes a pre-viability ban in direct violation of the U.S. Constitution.[2] S. 1553 also fails to provide a health exception, which is constitutionally required even where a law bans abortion post-viability. Each time a similar ban on abortion has been challenged in court, it has been blocked.[3] The Supreme Court refused to hear an appeal of Arizona's version of this ban, thereby leaving in effect the appellate court ruling striking down the ban as unconstitutional.[4] And just in August of this year, Idaho decided not to appeal to the Supreme Court a circuit court decision that struck down its twenty-week ban on abortion.[5]

S. 1553 Would Dangerously Interfere with the Patient-Provider Relationship and Harm Women's Health

S. 1553 would turn health care providers into criminals, threatening them with a prison sentence of up to five years for providing the care their patients need. It ties the hands of providers, preventing them from providing their patients with the best, individualized medical care most appropriate to the patient's circumstances and health needs. Instead, the bill requires a provider to give patients medically inappropriate information and to deny care to those who do not meet the bill's extremely narrow and inadequate exceptions. The American Congress of Obstetricians and Gynecologists has come out in strong opposition to twenty week bans, emphasizing that bills like S. 1553 impose "medically inappropriate and unnecessary requirements dictating how providers should deliver medical care."[6]

S. 1553's Life Exception Is Overly Narrow and Puts Insurmountable Obstacles in the Path of Health Care Providers

S. 1553 includes an exception for when a woman's life is at risk due to a physical condition, but it is so narrow and limited that it is almost meaningless. The exception requires that, even when a woman's life is at risk, providers must "wait and see" whether the patient really would die or suffer "substantial and irreversible physical impairment of a major bodily function" before performing an abortion. Moreover, the exception fails to acknowledge all life-threatening situations by expressly excluding mental illness, meaning that a woman who is suicidal due to a mental illness could be denied an abortion that could save her life.

S. 1553's Rape and Incest Exception Ignores the Real-Life Experiences of Sexual Assault Survivors

S. 1553 ignores the experience of a sexual assault survivor by imposing requirements that would deny her control at a critical time and force her to take actions she might not be ready or able to take, which could lead to further trauma and unnecessary risks. For example, it requires adult women who are assaulted to either seek medical care (in addition to seeing her abortion provider) or report the assault to the authorities.[7] Incest survivors who are minors are eligible for an abortion only if they report the crime and adult survivors of incest are completely carved out of the bill's exception. Even if a survivor of sexual assault complies with these requirements, she must then take the additional step of providing documentation proving that she satisfied them. Overall, because the exception is so complicated and includes so many requirements in order to become eligible for it, the survivors of sexual assault who actually could qualify for it are unlikely to do so.

A woman's health, not politics, should drive important medical decisions. S. 1553 is an unconstitutional attempt to impose a nationwide ban on abortions at twenty weeks. It ignores a woman's individual circumstances, threatens her health, and takes an extremely personal medical decision away from a woman and her health care provider.

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1. This bill would prohibit abortions for pregnancies that are twenty or more weeks "post-fertilization." Such dating of pregnancies is not used in medical practice as providers date pregnancies based on last menstrual period.
2. *Gonzales v. Carhart*, 550 U.S. 124, 146 (2007); P*lanned Parenthood of S.E. Pa. v. Casey*, 505 U.S. 833, 846 (1992); *Roe v. Wade*, 410 U.S. 113, 165 (1973). *See also Paul A. Isaacson, M.D. et al. v. Tom Horne, Attorney General of Arizona, et al*. 716 F.3d 1213, 1217 (2013) ("Supreme Court case law concerning the constitutional protection accorded women with respect to the decision whether to undergo an abortion has been unalterably clear regarding one basic point…a woman has a constitutional right to choose to terminate her pregnancy before the fetus is viable.")
3. *See, e.g., McCormack v. Hertzog*, No. 13-35401, 788 F.3d 1017 (9th Cir. May 29, 2015) (Idaho law); P*aul A. Isaacson, M.D. et al. v. Tom Horne, Attorney General of Arizona, et al*. 716 F.3d 1213 (2013) (Arizona law), cert. denied, 134 S. Ct. 905 (2014); *Lathrop, et al. v. Deal, et al*., No. CV224423, (Sup. Ct. of Fulton Cnty., Ga., Dec. 21, 2012) (Georgia law). For the cases striking down laws that would impose earlier bans on abortion: *see MKB Mgmt. Corp. v. Stenehjem*, No. 14-2128, 2015 WL 4460405 (8th Cir. July 22, 2015) (holding as unconstitutional North Dakota's six-week abortion ban); E*dwards v. Beck*, No. 14-1891, 786 F.3d 1113 (8th Cir. May 27, 2015) (holding as unconstitutional Arkansas' twelve-week abortion ban because "the Act prohibits women from making the ultimate decision to terminate a pregnancy at a point before viability." Id. at *7.).
4. Lawrence Hurley, *Supreme Court Will Not Hear Arizona Abortion Law Appeal*, REUTERS, (Jan. 13, 2014), http://www.reuters.com/article/2014/01/13/us-usa-court-abortion-idUSBREA0C0VM20140113.
5. Jennifer Haberkorn, *Idaho Won't Ask SCOTUS to Reinstate 20-week Abortion Ban*, POLITICO, (Aug. 26, 2015), https://www.politicopro.com/health-care/whiteboard/2015/08/idaho-wont-ask-scotus-to-reinstate-20-week-abortion-ban-059555.
6. Letter dated May 13, 2015 from the American Congress of Obstetricians and Gynecologists and 17 other medical and public health organizations opposing H.R. 36, S. 1553's counterpart in the House of Representatives.
7. According to one report, only 35 percent of women who are raped or sexually assaulted reported the assault to police and 35 percent of women sought treatment for injuries stemming from the assault. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, March 2013, Female Victims of Sexual Violence, 1994-2010. For a variety of reasons, survivors may not be in a position to report a sexual assault. See Maryland Coalition Against Sexual Assault, Fact Sheet: Reporting Sexual Assault: Why Survivors Often Don't, http://www.umd.edu/Sexual_Misconduct/files/Why-Is-Sexual-Assault-Under-Reported.pdf.