



REPRODUCTIVE RIGHTS & HEALTH

H.R. 36 IS AN UNCONSTITUTIONAL BAN ON ABORTION THAT WOULD HARM WOMEN'S HEALTH AND RIGHTS

House bill H.R. 36 would impose a dangerous and unconstitutional nationwide ban on abortion that threatens individuals' health and legal rights. The bill includes an arbitrary cutoff date, after which abortion providers would be criminalized for providing abortion. This bill is an attempt to override the core principles of *Roe v. Wade*, and interfere in the provider-patient relationship. Politicians are not medical experts, and this is not an area where they should interfere.

H.R. 36 IS UNCONSTITUTIONAL

- H.R. 36 is in direct violation of the U.S. Constitution: it bans almost all abortions at an arbitrary cutoff date of twenty weeks¹ and it does not contain an exception for when an abortion is necessary to protect the woman's health.²
- Each time a similar ban on abortion has been challenged in court, it has been blocked.³

H.R. 36 DEPRIVES INDIVIDUALS OF THE ABILITY TO MAKE A PERSONAL MEDICAL DECISION

- H.R. 36 would prevent individuals across the country from receiving an abortion after an arbitrary cutoff date, ignoring the many reasons why someone may need an abortion later in pregnancy.
- It is not always possible for a woman to get an abortion as soon as she would like. Some need time to gather funds to cover the cost and travel. Others are delayed in finding out they are pregnant or may develop or discover problems with the pregnancy as it progresses. And politicians put more barriers in the way, like restrictions that cause clinics to close or withholding insurance coverage of abortion.
- These barriers are compounded for certain groups that already face barriers to accessing care. For example, African American, Latina, and Native American individuals

are overrepresented in low-wage jobs and are substantially more likely to live below the federal poverty line as compared to white women. For those working in low-wage jobs and struggling to make ends meet, delays associated with scheduling and saving up the funds to cover the direct and indirect costs of an abortion—such as child care, time off work, transportation expenses, and hotel costs—can push their procedure later in pregnancy. H.R. 36's arbitrary cutoff can leave many of these individuals unable to access the care they need.

- Everyone's situation is different. Politicians should not deny an individual the ability to make a legal decision in consultation with those they trust the most.

H.R. 36 WOULD SEND HEALTH CARE PROVIDERS TO JAIL AND INTERFERE WITH THE PATIENT-PROVIDER RELATIONSHIP

- H.R. 36 would criminalize health providers, threatening them with a prison sentence of up to five years for providing the care that their patients need. It also requires them to use an "informed consent" form that goes against established medical practice.
- The American Congress of Obstetricians and Gynecologists (ACOG) has come out in strong opposition to this bill, citing the serious threat this bill poses to women's health and because it is not based on sound science.⁴

H.R. 36'S LIFE EXCEPTION IS OVERLY NARROW AND PUTS INSURMOUNTABLE OBSTACLES IN THE PATH OF HEALTH CARE PROVIDERS

- H.R. 36's purported "life exception" is unacceptably narrow and puts so many obstacles in the path of health care providers that it is meaningless.
- Even when a woman's life is at risk, H.R. 36 forces providers to "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.
- The exception expressly excludes mental illness, meaning that an individual who is suicidal due to a mental illness could be denied a lifesaving abortion.



H.R. 36'S NARROW RAPE AND INCEST EXCEPTION IGNORES THE EXPERIENCES OF SEXUAL ASSAULT SURVIVORS

H.R. 36 ignores the experience of a sexual assault survivor by imposing requirements that would deny a survivor control at a critical time and force a survivor to take actions they might not be ready or able to take, which could lead to further trauma and unnecessary risks.

- H.R. 36 forces adult rape survivors either to report the crime or to seek medical care or counseling at least 48 hours prior to getting an abortion. To comply with this requirement, not only does a survivor have to see a provider other than the one providing the abortion, but they cannot see any provider in the same facility where abortions are performed (unless it is a hospital). This option is as burdensome and as difficult as reporting the crime. Sexual assault survivors may choose not to report the assault for a variety of reasons.

And, depending on the availability of medical care in the area where an individual lives, it may also be impossible for some, particularly survivors living in medically-underserved areas, to meet the requirement.

- H.R. 36 only exempts a survivor of incest if she is a minor. And it only exempts minor survivors of rape and incest if they report the crime to law enforcement or a government agency.
- H.R. 36 requires that rape and incest survivors provide documentation that they met the medical or counseling care or reporting requirements before they can get an abortion.

Throughout a pregnancy, a patient should be able to get the care she needs. It's time that politicians stop seeking to erode the legal right to abortion in pursuit of a political agenda.

- 1 See, e.g., *Planned Parenthood of S.E. Pa. v. Casey*, 505 U.S. 833, 879 (1992) (“[A] State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability”).
- 2 The U.S. Supreme Court has made clear that, even after viability, any prohibition on abortion must include an exception for women’s health. *Roe v. Wade*, 410 U.S. 113, 165 (1973); see also *Casey*, 505 U.S. at 879.
- 3 See, e.g., *Paul A. Isaacson, M.D. et al. v. Tom Horne, Attorney General of Arizona, et al.* 716 F.3d 1213 (2013) (Arizona law); *McCormack v. Hiedeman*, 900 F. Supp. 2d 1128 (D. Idaho 2013) (Idaho law); *Lathrop, et al. v. Deal, et al.*, No. CV224423, (Sup. Ct. of Fulton Cnty., Ga., Dec. 21, 2012) (Georgia law). The U.S. Supreme Court refused to hear an appeal of the Arizona case, leaving in effect the ruling from the appellate court striking down the law as unconstitutional.
- 4 “ACOG strongly opposes political efforts to limit a woman’s ability to get the care she needs, specifically, attempts to ban abortions through medically unnecessary cutoff points . . . H.R. 36, the proposed legislation in the U.S. House of Representatives . . . is unconstitutional and a gross interference in the delivery of care.” American Congress of Obstetricians and Gynecologists (October 3, 2017), available at <https://www.acog.org/About-ACOG/News-Room/Statements/2017/ACOG-Opposes-US-House-of-Representatives-Abortion-Ban>.

