

A Nationwide Ban on Abortion: Unconstitutional and Dangerous

JANUARY 2018

Since 1973, the United States Supreme Court's *Roe v. Wade* decision has protected a woman's right to abortion. The so-called "Pain-Capable Unborn Child Protection Act" (S. 2311), introduced in the Senate by Sen. Lindsey Graham (R-S.C.), would directly violate *Roe* by imposing a nationwide ban on abortion care.

S. 2311 would put women's health and well-being at risk and violate women's constitutional rights. The National Partnership urges members of Congress to reject this dangerous, cruel and unconstitutional abortion ban.

S. 2311 Threatens Women's Health and Rights

A woman should be able to get the care she needs throughout pregnancy. Instead, S. 2311 would interfere with a woman's ability to access care by banning abortion at 20 weeks. Every woman's situation is different. Some women face significant financial barriers that may delay their ability to obtain care. A growing number of women face obstacles and delays due to harmful legislative restrictions that target reproductive health care clinics.¹ And for others, a desired pregnancy might be transformed by a life-changing situation such as a serious medical diagnosis that requires chemotherapy, surgery or other medical treatment that is incompatible with pregnancy, or the diagnosis of a fatal fetal anomaly. S. 2311 would be devastating for women in any of these situations.

S. 2311 would interfere with providers' ability to give pregnant women the right care at the right time. If S. 2311 became law, health care providers would be forced to choose between caring for their patients and going to jail. The bill threatens providers with federal criminal penalties resulting in up to five years in prison, fines or both for providing care to patients when they need it.

"I am horrified to think that . . . the doctor who helped us . . . would be prosecuted as [a] criminal under this law for providing basic, safe medical care and expertise."

— Christy Zink, testifying before Congress about her decision to terminate her pregnancy after 20 weeks, upon learning that her fetus was missing half its brain.

Furthermore, the threat of a prison sentence could have a chilling effect on health care providers, deterring some from providing abortion care at other points in pregnancy, worsening the provider shortage and making it even more difficult for women to access this essential health service.

S. 2311 would undermine quality medical care and put women at risk. By interfering in the practice of medicine during what are often complex and urgent situations, S. 2311 puts women's health in jeopardy. The bill contains no health exception, which means providers would be required to delay medical care until a woman's serious condition becomes life-threatening. Further demonstrating the cruelty of this bill, the so-called life exception excludes women whose lives are threatened by mental health issues, such as risk of suicide. Moreover, the bill would deny a woman abortion care even in cases where the fetus is diagnosed with a fetal anomaly inconsistent with life, despite the fact that numerous conditions are only detected around or after 20 weeks of pregnancy.²

S. 2311 would disproportionately impact women of color. This abortion ban would disproportionately harm women who face converging barriers that can push them later in pregnancy before they are able to access abortion care. Women of color live at the intersection of a multitude of disparities and structural barriers that lead to a higher likelihood of being in a low-wage job, Medicaid-eligible and subject to the harmful Hyde amendment.³ People of color are also disproportionately without access to paid time off to address their health needs.⁴ These factors, combined with existing abortion restrictions that require women to find transportation (often to clinics that are very far away) and secure child care, mean that S. 2311 is a ban on top of barriers that would make it even more difficult for women of color to access abortion care.

S. 2311 imposes new restrictions on survivors of sexual assault. This bill is an affront to survivors of sexual assault. Women who have been raped would be required to obtain and document medical care or counseling at least 48 hours prior to receiving an abortion, creating a burdensome mandatory delay. To make matters worse, a woman would have to seek this care from a provider *other* than the one providing her abortion and at a facility that does not provide abortions, requiring her to have at least two appointments with two different providers to access the care she needs.

Additionally, the bill would require minors who survive rape or incest to report their assault in order to qualify for an exception to the ban. This narrow exception ignores the fact that the majority of sexual assault survivors do not, or are not able to, report their assaults to law enforcement for a variety of reasons.⁵ This bill, therefore, would impose onerous requirements on minors who may have a particularly difficult time reporting and documenting their assault, and could stigmatize sexual assault survivors who seek reproductive health services.

S. 2311 is blatantly unconstitutional. More than 45 years ago, the Supreme Court made clear that women have a constitutional right to abortion care, and that *no* legislature may ban abortion prior to viability.⁶ Additionally, the Court ruled that any restriction on abortion *after* viability must provide an exception “where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the [woman].”⁷ S. 2311 is unconstitutional because it is a ban on abortion care prior to viability and fails to include a health exception.

“A woman has a constitutional right to choose to terminate her pregnancy before the fetus is viable”

— Judge Marsha Berzon, writing on behalf of the 9th U.S. Circuit Court of Appeals to unanimously strike down Arizona’s 20-week ban, May 2013

The National Partnership for Women & Families stands against political interference in the practice of medicine, and we strongly urge members of Congress to reject this dangerous legislation.

1 Boonstra, H. D., & Nash, E. (2014). A surge of state abortion restrictions puts providers – and the women they serve – in the crosshairs. *Guttmacher Policy Review*, 17(1). Retrieved 29 September 2017, from https://www.guttmacher.org/sites/default/files/article_files/9-14_abortion_restrictions_w_jump.pdf

2 Brief for Amici Curiae Am. Coll. of Obstetricians & Gynecologists and Am. Cong. of Obstetricians & Gynecologists in Support of Plaintiffs-Appellants and Reversal at 4, *Isaacson v. Home*, 716 F.3d 1213 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 905 (2014) (No. 12-16670).

3 National Partnership for Women & Families. (2016, September). *Issue Brief: A Double Bind: When States Deny Abortion Coverage and Fail to Support Expecting and New Parents* (p. 4). Retrieved 29 September 2017, from <http://www.nationalpartnership.org/research-library/repro/abortion/a-double-bind.pdf>

4 *Ibid.*

5 National Institute of Justice. (2010, October 26). *Reporting of Sexual Violence Incidents*. Retrieved 27 September 2017, from <http://www.nij.gov/topics/crime/rape-sexual-violence/pages/rape-notification.aspx>

6 *Roe v. Wade*, 410 U.S. 113, 164–65 (1973).

7 *Ibid.*

The National Partnership for Women & Families is a nonprofit, nonpartisan advocacy group dedicated to promoting fairness in the workplace, reproductive health and rights, access to quality health care and policies that help women and men meet the dual demands of work and family. More information is available at NationalPartnership.org.

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