

May 19, 2016

VIA FACSIMILE AND FEDERAL EXPRESS

The Honorable Mary Fallin
Governor of Oklahoma
Office of the Governor
Oklahoma State Capitol
2300 N. Lincoln Blvd., Room 212
Oklahoma City, OK 73105

Re: Senate Bill 1552

Dear Governor Fallin:

The Center for Reproductive Rights strongly opposes Senate Bill 1552 and urges you to veto this blatantly unconstitutional measure. This bill will ban abortion in the state of Oklahoma in contravention of longstanding federal and state constitutional principles as well as basic human rights. This measure is harmful, discriminatory, clearly unconstitutional, and insulting to Oklahoma women and their families.

The Center for Reproductive Rights is a non-profit legal advocacy organization that seeks to advance reproductive freedom as a fundamental human right. A key part of our mission is ensuring that women throughout the United States have meaningful access to high-quality, comprehensive reproductive health care services. As a part of that mission, we promote policies and litigate cases across the United States that secure a woman's right to safe and legal abortion, including in Oklahoma. In fact, the Center has sued the state of Oklahoma eight times in the past six years challenging restriction after restriction on accessing legally protected reproductive health services, and we have won *every case* in which final judgment was rendered. The following sets forth our constitutional and health policy concerns with Senate Bill 1552.

I. Senate Bill 1522 is an Unconstitutional Ban on Abortion.

Senate Bill 1552 is blatantly unconstitutional and, if it takes effect, it will be the most extreme abortion law in this country since the landmark *Roe v. Wade* decision in 1973.¹ This bill would make it a felony to provide an abortion in Oklahoma at any stage of pregnancy, with no exceptions for the

¹ *Roe v. Wade*, 410 U.S. 113 (1973).

life or health of the woman.² In banning abortion, this bill would prevent all pregnant women in Oklahoma from making the basic and fundamental decision about whether to parent a child or terminate a pregnancy.

For over 40 years, the U.S. Supreme Court has recognized that the rights to liberty and privacy as protected by the United States Constitution extend to individuals' right to choose when and whether to have children.³ Twenty years ago, Justice Sandra Day O'Connor wrote in *Planned Parenthood v. Casey*:

[F]or two decades of economic and social developments, people have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail. The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.⁴

Specifically, the Court has repeatedly held that the Constitution prohibits a state from enacting a law that bans abortion prior the point in pregnancy when a fetus is viable.⁵ As the Supreme Court has emphasized, "viability marks the earliest point at which the State's interest in fetal life is constitutionally adequate to justify a legislative ban on nontherapeutic abortions."⁶ The Supreme

² See Section 3 of the bill, which would amend existing law to provide: "No person shall perform or induce an abortion upon a pregnant woman. Any person violating this section shall be guilty of a felony punishable by imprisonment for not less than one (1) year nor more than three (3) years in the State Penitentiary." The bill would also make it unprofessional conduct for a physician to perform an abortion with narrow exceptions (*see* Sections 1 and 2), potentially resulting in the loss of the physician's medical license. The bill would explicitly prohibit a physician who performs an abortion from obtaining or renewing a license to practice medicine in Oklahoma, and would require both the State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners to revoke the license of allopathic and osteopathic physicians who perform abortions in Oklahoma, respectively. While the unprofessional conduct and license revocation provisions in the bill contain narrow exceptions for abortions necessary to preserve the life of the woman, the bill would still make it a felony to perform *any* abortion. Therefore, the bill criminalizes the performance of *any* abortion with no exceptions for the woman's life or health, save for abortions performed to remove an ectopic pregnancy. *See* OKLA. STAT. tit. 63, § 1-730(A)(1) (defining "abortion" for purposes of criminal ban).

³ *See Carey v. Pop. Servs. Int'l*, 431 U.S. 678, 685 (1977); *accord Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992) (joint opinion of O'Connor, Kennedy & Souter, JJ); *Roe*, 410 U.S. at 163-64.

⁴ *Casey*, 505 U.S. at 854.

⁵ *See Roe*, 410 U.S. at 163-64; *Casey*, 505 U.S. at 860, 879.

⁶ *Casey*, 505 U.S. at 860, 870 ("We conclude the line should be drawn at viability, so that before that time the woman has a right to choose to terminate her pregnancy."), 879 ("Our adoption of the undue burden analysis does not disturb the central holding of *Roe v. Wade*, and we reaffirm that holding. Regardless of whether exceptions are

Court has never wavered from this position, despite numerous opportunities to do so.⁷ By completely banning abortions, Senate Bill 1552 wholly conflicts with all U.S. Supreme Court precedent on abortion while ignoring the integral part that abortion plays in helping to achieve equality for women.

II. Oklahoma's Policy Priorities Must Change.

Policymakers in Oklahoma should focus on advancing policies that will truly promote women's health and safety, not abortion restrictions that do just the opposite. Anti-choice politicians in the state have methodically restricted access to abortion and neglected to advance policies that truly address the challenges women and families face every day.⁸ According to a 2014 analysis, Oklahoma is already one of the most restrictive states in the country with respect to abortion access.⁹ And yet, Oklahoma ranks dead last in the country on overall indicators of women's and children's health and well-being.¹⁰ Policymakers' time and effort would be better spent on approving and implementing programs that actually support women and children. It is unconscionable for Oklahoma policymakers to continue their laser focus on restricting abortion instead of enacting much-needed policies that truly support the health of women and their families.¹¹

made for particular circumstances, a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability.”)

⁷ Both North Dakota and Arkansas recently asked the Supreme Court to review federal circuit court decisions striking down abortion bans at six and twelve weeks of pregnancy, respectively. In both instances, the Supreme Court declined to review these cases. *Stenehjem v. MKB Mgmt. Corp.*, 136 S.Ct. 981 (2016) (denying certiorari in North Dakota six-week ban case); *Edwards v. Beck*, 136 S.Ct. 895 (2016) (denying certiorari in Arkansas twelve-week ban case). In the most recent published Supreme Court opinion on abortion, the Court based its decision upholding a ban on a particular abortion procedure on the fact that safe alternative abortion procedures were available and explained that its decision was fully consistent with past precedent. *Gonzales v. Carhart*, 550 U.S. 124, 163-64 (2007).

⁸ Such as supporting women and children's health and socioeconomic well-being. See Bridgit Burns *et al.*, *Evaluating Priorities: Measuring Women's and Children's Health and Well-Being against Abortion Restrictions in the States*, State Brief: Oklahoma 5, Ibis Reproductive Health (2014), available at http://www.ibisreproductivehealth.org/sites/default/files/files/publications/Ibis%20Reproductive%20Health_Priorities_OK_FINAL_120514.pdf.

⁹ *Id.* Oklahoma ties with two other states in having the most abortion restrictions in the country.

¹⁰ *Id.*

¹¹ *Id.*

III. Conclusion

Abortion is one of the most common medical procedures sought by women in America. In fact, approximately one in three women in this country will have an abortion by the age of 45.¹² Women seeking abortion come from all social, economic, and cultural backgrounds – most are mothers and more than half identify as religious.¹³ Women seek abortions for many reasons: some decide to terminate unwanted pregnancies, while other women with wanted pregnancies ultimately seek abortions to protect their own health, to allow them to seek critical and sometimes life-saving medical treatment such as chemotherapy, or because of a diagnosis of a serious fetal anomaly.

Senate Bill 1552 is a blatantly unconstitutional ban on abortion. The bill disregards a woman's fundamental right to determine when and whether to have children, poses a serious risk to women's health, prohibits physicians from practicing medicine within the bounds of medical ethics and standards, and invites costly litigation. As noted above, the Center for Reproductive Rights has challenged unconstitutional restrictions on abortion in the state of Oklahoma *eight separate times in the past six years alone*. This bill will almost certainly lead to expensive court challenges that the state of Oklahoma simply cannot defend in light of longstanding Supreme Court precedent. We urge you to veto this bill. Please do not hesitate to contact us if you would like further information.

Sincerely,



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¹² “30% of U.S. women will have an abortion by age 45.” Guttmacher Institute, United States Abortion, <https://www.guttmacher.org/united-states/abortion> (last visited April 26, 2016).

¹³ Rachel Jones *et al.*, *Characteristics of U.S. Abortion Patients, 2008*, Guttmacher Institute (2010), <https://www.guttmacher.org/fact-sheet/induced-abortion-united-states#3> (last visited April 26, 2016).