



# 2011: A LOOK BACK

CENTER  
FOR  
REPRODUCTIVE  
RIGHTS

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Every year, anti-choice state legislators propose hundreds of measures intended to erode women's rights to abortion and reproductive health care. Some of these aim to restrict access by imposing mandatory waiting periods, ideologically biased counseling provisions, and other burdensome, unnecessary requirements. Other proposals are far more extreme, including those designed to ban abortion or prohibit women from accessing contraception.

From the start, the 2011 legislative session was marked by animus and antagonism to women's health, and the year quickly became an all-out assault on women's rights. Even though legislators reject the vast majority of the hundreds of bills proposed each year, 2011 was extraordinarily alarming as more than 60 bills became—for now—laws restricting women's access to reproductive health care. That is an exceptionally high number.

There is no question that 2011 will be viewed as a pivotal year in which millions of women lost important ground, suffered flagrant violations of their reproductive rights, and saw governments time and again act to harm, rather than improve, their health.

Nonetheless, anti-abortion forces have not won the day. Pro-choice governors and legislators defeated many proposals across the country. And the **Center for Reproductive Rights**, along with allies in advocacy, battled back in the courts and successfully blocked a number of serious intrusions into women's health and rights. A quick review of the Center's legal record for 2011 stands as testament that many of the laws state legislatures have recklessly passed do not hold up to judicial scrutiny:

**Kansas:** The Center won two preliminary injunctions—the first in federal court, the second in state court—against overreaching and inappropriate targeted regulation of abortion providers, known as TRAP laws. (See pp. 11-12 or **our website** for additional details on law and the case.)

**North Carolina:** One of two states in which the Center has brought challenges in 2011 to laws requiring women to view ultrasound images and hear biased, scripted counseling designed to dissuade women from having an abortion. (See pp. 14 and our website for more details.)

**North Dakota:** The Center obtained a temporary injunction against a law that the state itself admits bans physicians from providing medication abortion throughout the state. (See pp. 14-15 and **our website** for more information.)

**Oklahoma:** The Center won a temporary injunction against an unnecessary, harmful, and politically motivated law that could impose severe restrictions on physicians' ability to provide, and women's ability to receive, medications as a treatment alternative for pregnancy termination, including ectopic pregnancy. (See pp. 15–16 and **our website** for more information.)

Finally, we saw voters in Mississippi resoundingly reject a “personhood” amendment to the state's Bill of Rights, the latest attempt by an extreme anti-abortion group to abolish the right to a broad range of reproductive health care. The Center supported the grass-roots organizations opposing the measure and maintained a loud and high-profile voice in exposing the amendment's potential harm.

As we prepare for 2012, the Center offers this recap of the major trends of 2011, a look at what the next legislative session may bring, a state-by-state analysis of 2011's enacted laws, and notes on some of the positive legislation that will improve women's health and safeguard their rights.

# MAJOR TRENDS IN 2011

## INSURANCE RESTRICTIONS

In 2010, after fevered debate and contentious negotiating, Congress passed the Patient Protection and Affordable Care Act. The Act includes a controversial provision that opened the door to a wave of anti-abortion legislation. The “Nelson Amendment,” named after its sponsor, Sen. Ben Nelson (D-Neb.), restricts the means by which insurers can offer coverage for abortion in the state insurance exchanges that must be created by 2014. Even more damaging, the Nelson Amendment explicitly allows states to ban abortion coverage from state exchanges altogether. During the 2010 state legislative session, five states—Arizona, Louisiana, Mississippi, Missouri, and Tennessee—seized that opportunity.

The 2011 legislative session brought even more proposals to restrict insurance coverage for abortion. Prohibitions ranged from the exclusion of abortion coverage through the state exchanges (passed by Florida, Idaho, Indiana, Nebraska, Oklahoma, Utah, and Virginia) to bans on insurance for abortion in all private insurance plans (Kansas and Utah) to restrictions on state employees’ ability to obtain coverage for abortion through their employee health plans (North Carolina and Ohio). These types of access-restricting legislation were introduced in at least 26 states and enacted in 10.

## ATTEMPTS TO BAN ABORTION, BANS ON LATER ABORTION

Some legislators hoped in 2011 to undermine *Roe v. Wade* by choking off access to abortion altogether. At least five state legislatures—in Alabama, Louisiana, North Dakota, Ohio, and Oklahoma—seriously considered measures that could have banned abortion altogether, and similar bills were introduced in at least a dozen other states.

While no state passed a total ban on abortion, several states enacted bans on abortions at 20 weeks’ gestation, with only the narrowest exceptions, copying an extreme law passed in Nebraska in 2010.

### *Bans on Methods of Abortion*

Anti-abortion legislators increasingly exploited a new tool in restricting access by going after medication abortion. We saw several laws passed: some restricted how or by whom the medication may be given. Others prohibited the use of telemedicine in its application.

North Dakota and Oklahoma enacted laws—currently being fought by the Center—that deny women seeking medication abortion and other treatment access to medical care that accounts for scientific evidence, advances in medicine, and sound medical judgment. Several other states considered similar proposals.

Telemedicine has become a critical delivery method for health care in rural areas and to low-income individuals. The practice enhances the quality of medical care for millions. In

2011, Nebraska and Tennessee prohibited the provision of medication abortion through telemedicine. These types of laws disproportionately harm the impoverished, the very people for whom reproductive health care services can have the most vital consequences.

These types of bills raise serious constitutional questions and are harmful to women's health. The radical agenda of anti-abortion activists has created a climate in which women seeking legal abortions, including those situations where their health is threatened or fetal health is severely compromised, may no longer be able to get the care they need.

Taken together, the bans on abortion, on later abortion, and on certain methods of abortion represent an alarming disturbing trend to which the entire women's rights community should pay close attention in the years to come.

## **TARGETED RESTRICTIONS OF ABORTION PROVIDERS (TRAP)**

Anti-abortion legislators continued to use medically inappropriate and burdensome laws targeting abortion providers—called TRAP laws—to try to prevent women from accessing legal reproductive health care services. The true purpose of TRAP laws is to make it harder for women to exercise their constitutional right to choose abortion by making the delivery of those health care services prohibitively expensive, forcing doctors to abandon the practice and leaving women to suffer the resulting harm to their health.

In 2011, legislators passed TRAP laws in Arkansas, Kansas, Pennsylvania, Utah, and Virginia. Moreover, in Kansas and Virginia, anti-choice governors and administrations chose to pursue emergency regulatory processes, rushing laws into effect and bypassing the normally required public notice and comment period. In Kansas, the time frame for compliance—successfully delayed by the Center—was patently absurd, giving abortion clinics only two weeks to comply with a new set of medically inappropriate and onerous regulations. (See the analysis on Kansas on pp. 11-12 and on Virginia on pp. 18-19.)

## **BALLOT INITIATIVES**

In most cases, state legislators are responsible for passing the laws that erode women's rights and restrict their access to abortion and reproductive health care. Sometimes, however, anti-abortion legislators and activists use ballot initiatives for their extreme measures, whether to bypass opposition in the executive branch or to circumvent judicial precedent. Unlike a statute that must be passed by both houses of a legislature and signed by a governor, a ballot measure is decided by the voters and in most cases becomes law if approved by a simple majority.

This year produced three ballot initiatives related to reproductive rights that will be up for a vote over the next three years. In Montana in 2012, voters will be asked whether to approve a clearly unconstitutional parental involvement statute. In Florida in 2012 and Tennessee in 2014, measures seeking to roll back women's privacy rights under the state constitution will be on the ballot.

Though not the result of 2011 legislative activity, it is important to note the ballot initiative voters rejected in Mississippi in November 2011. Despite the fact that the Mississippi constitution plainly prohibits making any changes to the Bill of Rights through the ballot, a radical initiative was proposed that would have amended Mississippi's Bill of Rights to recognize life from the

moment of conception and to endow fertilized eggs and fetuses with the status of a “person” under the law.

Not only would this measure have unconstitutionally banned abortion, it also would have banned many forms of birth control and could have resulted in the end of assisted reproductive technology, such as in-vitro fertilization (IVF), in the state. Mississippi voters soundly rejected the measure on November 8, making this the third failed attempt by extremist anti-abortion, anti-contraception groups to ban abortion and birth control in the past four years.

Ballot initiatives intended to restrict reproductive rights pose a serious threat to women’s health and individual privacy rights, and the measures in Florida, Montana, and Tennessee should be actively opposed.

# A LOOK TOWARD 2012

In 23 states this past year, legislation designed to choke off women's access to reproductive health care and intrude on their constitutional rights became law. Several states require doctors to disseminate propaganda and inappropriate or flat-out fictitious medical "information." Elsewhere, legislators have undermined *Roe v. Wade* by prohibiting women from accessing abortion later in pregnancy except in the most narrow of situations, regardless of each woman's individual circumstances. And too many women now find that their access to affordable reproductive health care and to services designed to help impoverished or rural women has disappeared because of laws restricting the use of telemedicine for reproductive health.

While the volume of anti-choice laws was disturbing, the Center begins the new year energized by and proud of our victories in stopping some of the most harmful bills. And we are greatly encouraged by the degree to which the courts have agreed with our arguments and those of other advocates.

We know that anti-abortion activists and legislators will continue to launch attacks against women in 2012, but we are optimistic that many more have learned the lesson that their efforts are not passing judicial scrutiny. Not only have we experienced success in beating back some of the most severe and damaging measures, but voters in Mississippi showed that this country's citizens are not interested in violating women's rights and impinging on their access to essential reproductive health care.

State legislators with similar anti-choice leanings have no choice but to take notice that these laws do not pass muster in court and that their own constituents are not interested in pursuing these harmful ideas. Voters will be looking toward their elected representatives for leadership on issues like the economy and jobs—and will not approve if those officials choose instead to spend another year attacking women.

The Center for Reproductive Rights will continue to work closely with state-based pro-choice advocates and legislators to help defeat bills that would reduce or restrict women's access to reproductive health care. The Center also helps advocates put forward proactive legislation to increase access to essential reproductive health care. If your state is considering a law that would make it harder for women or girls to access reproductive health care and you would like to get involved in fighting back, or if you have a proactive piece of legislation you would like assistance with, please contact **Jordan Goldberg**, State Advocacy Counsel, at [jgoldberg@reprorights.org](mailto:jgoldberg@reprorights.org). For press inquiries or questions about the state-by-state analysis that follows, please contact **Kate Bernyk** at [kbernyk@reprorights.org](mailto:kbernyk@reprorights.org) or 917-637-3637.

# STATE BY STATE: AN UNPRECEDENTED ATTACK ON ABORTION & REPRODUCTIVE RIGHTS

## ALABAMA

### Ban on Later Abortion

Alabama placed itself among five radical states by enacting a ban on later abortion that is among the most extreme restrictions on abortion seen in the past few decades. HB 18 bans abortions beginning at 20 weeks' gestation (*i.e.*, before viability), with only limited exceptions for situations in which an abortion would be necessary to either save a woman's life or to prevent the risk of substantial and irreversible physical impairment of a major bodily function. The law excludes mental health from its narrow health exception and contains a special clause prohibiting physicians from performing an abortion even if the physician believes there is a risk the woman may commit suicide. Notably, the law lacks exceptions for fetal anomalies or pregnancies that result from rape or incest, and subjects providers to penalties that include imprisonment.

## ARIZONA

### Ultrasound/Telemedicine Restriction—Ban on Race or Sex Selection Abortion—Defunding Medical Abortion Training/Charitable Restrictions—Mifepristone Restriction

Arizona enacted four anti-abortion laws this year. The first, HB 2416, requires physicians to perform an **ultrasound** prior to an abortion and offer the woman the opportunity to look at the image, hear the fetal heart tones as well as a detailed explanation of the ultrasound image, and be provided with a physical picture of that image. The woman may decline each of these offers but must certify her decision in writing. The bill also **prohibits the use of telemedicine** in the provision of medication abortion.

HB 2443 prohibits so-called **"race or sex selection abortions."** In the U.S., bans on race and sex-selective abortion are proposed by anti-abortion legislators as a way to restrict access to abortion; they are not intended to and do not remedy the core problem of discrimination against women and people of color.

HB 2384 contains two distinct anti-abortion provisions. First, it **bans public funding for medical training to perform abortions**. Second, it prohibits taxpayers from taking **advantage of a charitable state tax deduction** if the taxpayer donates to any organization that provides or refers for abortion, or financially supports any other entity that provides or refers for abortions. This law would, for example, bar an individual from deducting a donation to a state-based domestic violence shelter that refers women to reproductive health clinics (the deduction would be allowed for federal purposes). In August, the ACLU filed a lawsuit on behalf of several nonprofits, including the Arizona Coalition Against Domestic Violence, challenging the law on First Amendment grounds. In December, a federal court granted the plaintiffs a preliminary injunction, putting the law on hold as the lawsuit continues.

Finally, in another attempt to limit access to care, Arizona enacted SB 1030, which **bans physicians' assistants from providing mifepristone**, one of the drugs used to induce a medication abortion. Planned Parenthood filed a lawsuit challenging the constitutionality of this law, and that lawsuit is pending.

## ARKANSAS TRAP

**HB 1855** requires any facility that provides 10 or more abortions per month to become licensed as an abortion facility and to follow a set of regulations that apply only to abortion facilities and not to any other outpatient surgical facility.

## FLORIDA

### Ultrasound—Parental Involvement Restrictions—Insurance Restrictions—Anti-Abortion Funding Through Government

Florida took a number of steps this year toward reducing women's access to abortion, and placed a measure on the ballot for 2012, asking voters to decide whether to **amend the state's constitution and severely threaten women's reproductive rights**. The ballot measure would overturn a state supreme court decision holding that Florida's constitution includes strong protections for women's rights to terminate a pregnancy. If approved, the measure would roll back women's privacy rights as well as enshrine in the Florida Constitution a harmful provision **prohibiting the state from providing funding for abortion**.

HB 1127 requires physicians to perform an **ultrasound** prior to an abortion and to offer the woman the opportunity to look at the ultrasound image and hear a detailed explanation of the image. She may decline those offers but must do so in writing.

Florida placed more **restrictions on parental involvement** with HB 1247, which makes it more difficult and time-consuming for a minor to obtain an abortion if she feels she cannot involve a parent. Under this law, a minor seeking a judicial bypass of the state's parental notice requirement must file her petition in her county of residence, rather than being allowed to file in one of the state's other counties, potentially compromising her privacy. The law gives judges more time to issue a decision, potentially delaying minors for as many as five business days after they file their petition.

HB 97 **prohibits abortion coverage within health insurance plans** offered in the state exchange that are purchased in whole or part with federal or state funds. This law allows insurers to offer insurance coverage for abortion only to women who are victims of rape and incest or when a woman's life is endangered—not even allowing coverage when a woman's health is seriously threatened by her pregnancy.

Finally, Florida is **funding anti-abortion activists through the government** with HB 501, which redirects fees charged for the state's "Choose Life" license plates. Previously, the motor vehicle division distributed these funds to Florida counties, but now one private, anti-abortion organization called "Choose Life, Inc." will receive all funds.

## IDAHO

### Ban on Later Abortion—Insurance Restrictions

Idaho passed two anti-abortion laws this year. First, the legislature enacted a “copycat” version of the extreme **ban on later abortion** passed by Alabama and a handful of states this year (SB 65), banning abortions beginning at 20 weeks’ gestation (i.e., before viability), with only the same narrow exceptions as those included in Alabama’s bill. See Alabama on pp. 8 for additional details.

SB 1115 **bars any insurer from offering insurance coverage for abortion in the state exchange**, except when the woman’s life is endangered or in cases of rape or incest.

## INDIANA

### Defunding Planned Parenthood/Reproductive Health Services—Mandatory Ideological Counseling—Ban on Later Abortion—Ultrasound—Parental Involvement Restrictions—Physician Restrictions/Admitting Privileges—Insurance Restrictions—Excessive Reporting/Abortions for Minors

This year, Indiana enacted an extreme, wide-ranging, seven-provision abortion law (HB 1210) containing myriad restrictions on women’s access to abortion and other reproductive health care.

1. **Defunding Planned Parenthood/Reproductive Health Services**—prohibits the state agencies charged with distributing Medicaid funds from providing any funding to Planned Parenthood of Indiana, despite its standing as a qualified Medicaid provider in the state. If implemented, this provision would reduce low-income women’s access to a range of reproductive health care services, including STI testing, pap smears, and contraception.
2. **Mandatory Ideological Counseling**—the law requires abortion providers to give their patients additional state-mandated, ideological counseling and to tell their patients specific false, misleading, and irrelevant statements.
  - Planned Parenthood of Indiana brought a suit challenging provisions 1 and 2 above. In June, a federal court granted a preliminary injunction against both parts of the bill. The state has appealed that decision and the appeal is pending before the federal Court of Appeals for the 7th Circuit.
3. **Ban on Later Abortions**—enacts the same ban on abortions beginning at 20 weeks’ gestation, with the same narrow exceptions found in the Alabama and Idaho. See pp. 4–5 for additional details.
4. **Ultrasound**—requires providers to offer each abortion patient the opportunity to view an ultrasound image and hear the fetal heart tone if audible, and requires the patient to certify in writing whether or not she has agreed to view the image or hear the heartbeat.
5. **Parental Involvement Restrictions**—places new limitations on minors’ access to judicial bypass, restricting the venues in which the minor may bring her petition.
6. **Physician Restrictions on Admitting Privileges**—requires physicians who provide abortion services to obtain admitting privileges at a hospital within 30 miles of the abortion facility or to enter into an agreement with another physician who has such privileges.

7. **Insurance Restrictions**—after making abortion more difficult to get and attempting to shame patients by showing them that the state disapproves of their decisions, the law made abortion more expensive for women and families by prohibiting insurers from offering insurance coverage for abortion in the state exchanges, except in cases in which the woman's life is in danger, there is a risk of substantial and irreversible impairment of a major bodily function, or the pregnancy is a result of rape or incest.

In addition, Indiana passed a law (HB 1474) **requiring abortion providers to report additional information about minor patients.**

## **KANSAS**

### **TRAP—Parental Consent Restrictions—Ban on Later Abortions—Insurance Restrictions—Defunding Planned Parenthood**

Kansas started this year poised to restrict abortion in as many ways as it could. The legislature considered a number of bills, and the governor expressed his intent to sign any anti-choice legislation presented to him. By the end of the session, Kansas had enacted four different anti-abortion bills as well as a budget with anti-abortion provisions.

In the last days of its session, the legislature passed a **TRAP** bill (SB 36) imposing a variety of new and burdensome medical restrictions exclusively on health care providers that perform abortions. The bill authorized the Kansas Department of Health and Environment to issue new licensing regulations for abortion facilities, and the Department of Health proceeded to promulgate a temporary set of **medically inappropriate and onerous regulations**. Abortion providers were required to comply with the new requirements within a matter of days in order to legally perform abortions after the law's effective date.

#### **The Center Takes Action: *Hodes & Nausser, MDs, P.A., et al. v. Robert Moser, M.D., et al.***

The Center for Reproductive Rights filed a lawsuit in federal court, and the court granted an injunction blocking enforcement of the regulations on their effective date. Subsequently, the Department promulgated new permanent regulations, which still impose inappropriate and highly burdensome requirements that would make it virtually impossible for physicians like Drs. Hodes and Nausser to continue providing abortion services at all. The Center filed another lawsuit, this time in Kansas state court, challenging the new permanent regulations as well as the bill itself. The state court immediately granted a temporary restraining order against enforcement of the permanent regulations, and later entered an order preventing enforcement of both regulations and the bill pending the outcome of the Center's lawsuit. Kansas also passed HB 2035, an omnibus piece of legislation that, among other things, restricts even further minors' access to abortion, **changing the existing requirement for parental notification** to a requirement of written, notarized parental consent before a minor may obtain an abortion. For those minors who cannot inform their parents and choose instead to pursue a judicial bypass, the law narrows the facts that the court can take into consideration and gives the court the ability to order the minor to undergo psychological counseling before issuing a decision. The law also amends the existing biased counseling law to require that each patient must now be informed by her health care provider that "the abortion will terminate the life of a whole, separate, unique, living human being."

Kansas is also one of several states that enacted a **ban on later abortions** (HB 2218), banning abortions beginning at 22 weeks dating from the woman's last menstrual period, with similar narrow exceptions as those found in the other bills.

Kansas took two other steps to make sure that women could not access reproductive health care services. The legislature enacted HB 2075, **prohibiting insurers in the private market from offering insurance coverage for abortion** in any case other than where an abortion is necessary to save a woman's life. Insurers may offer optional riders with coverage for abortion. In August, the ACLU and ACLU of Kansas and Western Missouri challenged this law for a variety of reasons, including that it discriminates on the basis of sex. That case is still pending.

Finally, the legislature and governor included a provision in the 2012 budget (HB 2014) that will **defund Planned Parenthood**, reducing women's access to a broad range of essential reproductive health services in Kansas. Planned Parenthood immediately challenged this law, which was enjoined by a federal court. The case is ongoing, but the court has ordered the state to restore funding to Planned Parenthood, as well as another family planning clinic that intervened in the lawsuit, while the suit is pending.

## LOUISIANA

### Mandatory Ideological Counseling

HB 636 requires all facilities that provide abortions to post large, detailed, and conspicuous signs in every patient waiting room or treatment room that reiterate many of the elements of the **biased counseling** that the state mandates, including that it is unlawful for anyone to force a woman to have an abortion against her will, that the father is legally obligated to support the child, and that state agencies are available to help women carry to term and to assist them after a birth.

## MICHIGAN

### Ban on Partial Birth Abortion

**SB 160** and **HB 4110** mimic the existing federal **ban on so-called "partial birth abortion,"** joining a number of other states that have passed imitations of the federal ban that was upheld by the U.S. Supreme Court in *Gonzales v. Carhart* in 2007.

## MISSOURI

### Restriction on Later Abortion

Although Missouri law already restricts abortion after the point of viability, the legislature passed an additional bill (SB 65) placing further, unnecessary, and **inappropriate burdens on physicians who provide abortions beginning after 20 weeks' gestation**. Moreover, SB 65 rewrites the existing exceptions for abortions that are necessary after viability so that the law no longer adequately protects women's health; While current law permits abortions whenever necessary to save a woman's life or health, this law will prohibit abortions after viability unless the woman's life is physically threatened or she is at serious risk of "substantial and irreversible physical impairment of a major bodily function." This bill was enacted when the governor, rather than veto the bill or sign it, allowed it to become law without his signature.

## MONTANA

### Constitutional Amendment to Roll Back Protections

In 2011, the state legislature was determined to pass an **unconstitutional restriction on minors' access to abortion**. The Montana Constitution provides strong protections for individuals' right to privacy, women's right to choose whether to continue a pregnancy, and minors' rights in general. Montana courts have already struck down a parental notification law under the state constitution. Nonetheless, the state legislature this year first passed an almost identical unconstitutional restriction, which was vetoed by the governor, and then passed a measure (HB 627), placing that proposal on the 2012 ballot. If approved, the measure would require that a physician personally notify one parent of a minor at least 48 hours before the abortion can take place. Minors could only avoid parental notice by seeking a judicial bypass, and the bypass standards set up by the bill are constitutionally inadequate under both the state and federal constitutions, allowing courts to grant bypasses only if they find both that the minor is competent to choose an abortion and that it is in her best interests, or that she is the victim of abuse.

## NEBRASKA

### Insurance Restrictions—Telemedicine Restriction—Parental Involvement Restrictions

This year, Nebraska continued to restrict women's reproductive rights by enacting three new abortion restrictions, despite the extensive, unnecessary restrictions on abortion already on the books in the state.

First, LB 22 essentially **prohibits insurers in either the private market or the state health care exchange from offering insurance coverage for abortion**, other than for abortions necessary to avert a woman's death. The bill allows for individually paid-for riders.

Second, LB 521 **prevents patients from accessing medication abortion through telemedicine**.

Finally, Nebraska passed a **parental consent** bill, LB 690. Existing law already required that a parent of a minor seeking abortion be notified, but the new law creates a more stringent requirement that one parent provide written, notarized consent. In cases of abuse, the law requires the minor to seek consent from a grandparent instead. Minors may only avoid the consent requirement by seeking a bypass in court.

## NEW HAMPSHIRE

### Parental Consent Restrictions

HB 329 requires physicians to **notify a parent of any minor seeking an abortion** 48 hours before the procedure can take place. The law provides an exception only for medical emergencies, but not for victims of abuse, rape, or incest. For that reason and others, the state's governor vetoed the legislation, but the legislature ultimately overrode the veto.

## NORTH CAROLINA

### Ultrasound/Mandatory Biased Counseling—Defunding of Planned Parenthood—Anti-Choice Funding Through Government

The North Carolina legislature enacted, over the governor's veto, a law imposing **mandatory delay, biased counseling, and mandatory ultrasound requirements** on all women seeking abortions in the state (HB 854). The law requires all abortion patients to receive state-mandated information 24 hours before being permitted to seek an abortion and requires all patients to be shown an ultrasound image and given a verbal description of that image at least four hours before an abortion. Like the ultrasound law enacted in Texas, this law will subject women to information and images that are not medically necessary, even over their objections, thus interfering with the doctor-patient relationship and demonstrating that the North Carolina legislature does not believe that women are capable of making their own decisions.

#### The Center Takes Action: *Gretchen Stuart, et al. v. Janice Huff, et al.*

On September 29, 2011, the Center for Reproductive Rights, with ACLU of North Carolina, ACLU Reproductive Freedom Project, and Planned Parenthood Federation of American, filed a challenge to the law on behalf of North Carolina physicians and facilities that provide abortion services and their patients. Before the law went into effect in late October, a federal court granted the Center a preliminary injunction of the entire ultrasound provision, enjoining it for the duration of the lawsuit.

HB 200 specifically **prohibits Planned Parenthood from receiving any funds** distributed by the state. The legislature passed this bill over the governor's veto. The prohibition will result in Planned Parenthood losing both state and federal funds from Medicaid, Title X, and other programs, leaving women in the state with far less access to critical and preventative reproductive health services. The budget bill also **prohibits any state employee insurance plan from offering coverage for abortion**. In July, Planned Parenthood of Central North Carolina filed a suit in federal court challenging the provision prohibiting any funding from going to their organization, and the court immediately enjoined that part of the budget, allowing Planned Parenthood to continue to access public funding.

Finally, SB 289 creates a **“Choose Life” license plate** and directs the funds collected from the plates to the Carolina Pregnancy Care Fellowship, which **distributes the money to private agencies that provide anti-choice counseling** to pregnant women. The funds are specifically prohibited from being distributed to any entity that “provides, promotes, counsels, or refers for abortion.” The legislature enacted this law while at the same time rejecting a proposal to create a pro-choice license plate. The ACLU of North Carolina challenged this law in September, asserting that the state engaged in viewpoint discrimination by refusing to offer a license plate in favor of reproductive choice in addition to the “Choose Life” plate. The court granted a preliminary injunction on November 28, 2011, halting the production of the “Choose Life” license plates until the case is resolved.

## NORTH DAKOTA

### Medication Abortion Restrictions/TRAP

North Dakota moved aggressively to restrict women's access to abortion by enacting a law (HB 1297) that could completely **eliminate access to medication abortion**, one of the most common forms of early abortion. The state concedes that the bill is a complete ban on medication

abortion. The law also demonstrates a fundamental misunderstanding by the North Dakota legislature as to the role of the FDA in approving drugs and drug labeling for marketing in the United States. In addition, HB 1297 imposes additional **TRAP regulations** and other burdensome requirements on abortion providers in addition to those already in place.

**The Center Takes Action: *MKB Management Corp d/b/a Red River Women's Clinic, Kathryn Eggleston, M.D. v. Birch Burdick, Terry Dwelle, M.D.***

In July, the Center for Reproductive Rights filed a suit in North Dakota state court challenging these restrictions on medication abortion and seeking a preliminary injunction against the bill. The court immediately granted a temporary injunction, enjoining the bill until a hearing is held in January 2012.

## OHIO

### Restrictions on Later Abortion—Parental Involvement Restrictions—Ban on Abortion in Public Facilities—Insurance Restrictions

Ohio enacted four restrictions on women's access to abortion this year. HB 78 imposes **restrictions on later abortions** by requiring any provider of abortion services beginning after 20 weeks' gestation to perform unnecessary testing to ensure that the fetus is not viable, even though fetal viability does not occur until weeks later.

The bill also **eliminates existing exceptions for abortions performed after viability** in cases in which women's lives or health are endangered. Instead, a physician who provides an abortion in such circumstances may offer as a defense in court that the woman was in danger.

HB 63 amends the state's existing **parental consent law**, restricting the counties in which a minor seeking an abortion without notifying her parents may file her petition for a judicial bypass. The new measure also codifies into law specific questions the judge must ask at the hearing, thus making the bypass process more onerous for the minor seeking an abortion.

HB 153 is a budget bill with two anti-abortion provisions: 1) The budget **bans abortions from being performed in public facilities** and 2) **prohibits abortion coverage in insurance plans of local public employees**, with exceptions in both situations for pregnancies that threaten a woman's life or are the result of rape or incest.

Finally, Ohio passed HB 79, which **prohibits insurance plans operating in the state's exchange from offering coverage for abortion** except in cases where the woman's life is endangered or where the pregnancy was the result of rape or incest reported to a law enforcement agency.

## OKLAHOMA

### Medication Abortion Restrictions—Ban on Later Abortions—Insurance Restrictions

Oklahoma continued its long tradition of attacking women's health and rights. HB 1970 restricts access to medications used to terminate pregnancy. In addition to forcing women with ectopic pregnancy to undergo surgery, the new law prevents physicians from treating patients seeking termination of a uterine pregnancy with a protocol for medication abortion that is based on scientific evidence, sound medical judgment, and advances in medicine. This law is similar to the one passed in North Dakota and the Center responded with the same force.

### **The Center Takes Action:** *Oklahoma Coalition for Reproductive Justice, et al. v. Terry Cline, et al.*

The Center for Reproductive Rights filed a suit in state court, arguing that the law violates the rights of women, and those who provide care to them, including their rights to equal protection; privacy; bodily integrity; and freedom of speech under the Oklahoma Constitution. The state court prevented the law from going into effect and motions for summary judgment will be filed in late January.

Oklahoma's HB 1888 is identical to the bills passed in a several other states **banning abortion beginning at 20 weeks' gestation** except in the most narrow of circumstances.

Finally, after a similar bill was vetoed by the previous governor, this year Oklahoma enacted SB 547, a law **prohibiting insurers both in the exchange and in the private market from offering comprehensive insurance plans that cover abortion**. Plans can only provide coverage for cases where the woman's life is at risk. The law permits insurers to offer separate, optional "riders" solely for abortion coverage, as long as those riders are purchased in the private market outside of the exchange. The current governor signed the bill.

## **PENNSYLVANIA**

### **TRAP**

In the last weeks of the year, Pennsylvania became the fifth state to enact **TRAP legislation** in 2011. Despite the fact that surgical abortion is one of the safest, most common, office-based surgical procedures, SB 732 imposes onerous, medically inappropriate regulations on any health care provider that offers surgical abortion services (even if the facility or physicians' office provides very few surgical abortions) by forcing those facilities to meet the same standards as ambulatory surgical facilities.

## **SOUTH DAKOTA**

### **Mandatory Waiting Period**

SB 1217 would put into effect the **most extreme waiting period** in the country. The law, currently enjoined, requires that 72 hours prior to obtaining an abortion, the woman must meet with the physician, receive state-mandated counseling designed to dissuade her from having an abortion, and then visit a "pregnancy help center" that does not perform or refer for abortions. These "crisis pregnancy centers" (CPCs) have a central mission to dissuade women from seeking abortions, and they use a variety of tactics, including, at some centers, providing biased, false, and misleading information about abortion.

In addition, the law also **requires women to provide their personal, private medical information** to the staff of the crisis pregnancy center, who are not subject to the same confidentiality rules that govern licensed medical providers. In a rural state like South Dakota, where access to abortion is already severely limited, forcing women to make three separate trips in order to obtain an abortion could pose an insurmountable obstacle, particularly for low-income women who lack transportation, funds for a hotel, or the means to pay for child care. For these reasons and others, Planned Parenthood of Minnesota, North Dakota, South Dakota filed a lawsuit, and on June 30, 2011, the federal district court in South Dakota granted a preliminary injunction, finding that Planned Parenthood was likely to succeed in its claims that the bill violates South Dakota women's constitutional rights. This case is still pending, although the

South Dakota Attorney General has indicated that his office does not plan to appeal the ruling.

## TENNESSEE

### Constitutional Amendment to Roll Back Protections— Telemedicine Restrictions

The Tennessee legislature completed the final step required to put a measure on the ballot in 2014 that will ask voters whether they want to **amend the state constitution to roll back protections for privacy and reproductive rights** (SJR 127). This initiative is intended to reverse a Tennessee Supreme Court decision holding that the state constitution provides strong protection for a woman's right to choose to terminate a pregnancy. If approved, the measure would limit women's privacy rights under the state constitution and further restrict women's access to reproductive health care.

In addition, Tennessee enacted a law (SB 424) **prohibiting the provision of medication abortion through telemedicine**.

## TEXAS

### Ultrasound—Defunding Planned Parenthood/Family Planning Services— Anti-Choice Funding Through Government

This year, Gov. Rick Perry and the Texas legislature made it a top priority to enact anti-abortion legislation. In fact, the governor started off the year by declaring an "emergency" that the legislature must address by enacting a law **forcing women to view and hear descriptions of ultrasound images before being permitted to have an abortion**.

The legislature passed HB 15, which requires abortion providers to show each patient seeking an abortion an ultrasound image, describe that image to her, and make the fetal heart tone audible a full 24 hours before the woman is permitted to have an abortion. The bill contains a few narrow exceptions for women in specific situations, such as victims of sexual assault, and allows women who live 100 miles or more from the closest abortion provider to wait two hours as opposed to 24. These requirements are intrusive, interfere in the doctor-patient relationship, patronize women, and violate the constitutional rights of both patients and providers.

### **The Center Takes Action:** *Texas Medical Providers Performing Abortion Services, et al. v. David Lakey, M.D., et al.*

The Center for Reproductive Rights filed its lawsuit in June 2011. In late August, a federal court issued a preliminary injunction against key pieces of the ultrasound provisions, finding that the requirements that women disclose sensitive, highly personal information to obtain an exception to the ultrasound provisions and that doctors display and describe the sonogram images and make the heartbeat audible, even against women's wishes, violated the First Amendment. The court also found portions of the law vague.

The State Defendants appealed the preliminary injunction ruling, and in early January, the Court of Appeals for the Fifth Circuit vacated the injunction, disagreeing with the trial judge's conclusion that portions of the law were unconstitutional. The Center is currently pursuing its request for a permanent injunction in the federal trial court.

In a separate bill, SB 7a essentially **prohibits Planned Parenthood from receiving any state or federal funding**. It also prohibits any hospital district from choosing to fund medically necessary abortions beyond those necessary to save a woman's life.

Finally, SB 257 creates new **"Choose Life" license plates**. Fees generated from these plates will be used to provide funds to nonprofits that do not provide or refer for abortion.

## UTAH

### TRAP—Insurance Restrictions—Subjective Denial of Medical Service

First, Utah enacted a **TRAP** bill, HB 171, requiring the Utah Department of Health to create a new licensure scheme exclusively for health care facilities that provide abortion care. The new, unnecessary requirements do not apply to any other type of surgical medical care. The bill vests oversight authority with the Department of Health, requires clinic inspections, and provides additional reporting requirements.

HB 354 establishes a **complete ban on insurance coverage for abortion in plans offered both on the private market and in the health care exchanges**. The bill does not allow insurers to offer riders or separate policies for abortion coverage and only allows insurers to offer coverage for abortions necessary to save a woman's life or avert severe injury, or in cases of rape, incest, or where there is a lethal fetal anomaly.

Finally, HB 353 makes it more difficult for patients to access care by allowing health care providers to **refuse, for either religious or moral reasons, to treat a patient seeking an abortion** or a patient undergoing a procedure that could possibly result in the termination of a pregnancy. The law also allows hospitals and health care facilities to refuse to even admit a patient for the same reasons, making it more difficult for patients to access care. The law contains no exceptions for situations where a woman needs urgent medical care.

## VIRGINIA

### TRAP—Insurance Restrictions

Virginia enacted two restrictive laws in 2011. First, the legislature pushed through at the last minute a **TRAP bill** that could threaten the ability of women in Virginia to access abortion at all. The governor immediately urged the adoption of extreme, unnecessary, and medically inappropriate regulations pursuant to that bill, and insisted on an expedited time frame, reducing the opportunities for public input and agency consideration.

This law, SB 924, requires abortion clinics that offer first-trimester abortion services to be classified as a category of "hospital" and requires the Virginia Board of Health to promulgate "emergency" regulations of these facilities. On September 15, 2011, the Board approved a draft of the "emergency" regulations that is in large part medically inappropriate and politically motivated, and that poses a significant threat to patient access to care and confidentiality. For example, the regulations incorporate extensive, burdensome physical plant requirements that are not related to abortion services and that could reduce or completely eliminate access to care.

The regulations also include provisions permitting agency employees to arrive on the clinic premises at any time and requiring the facility to give them access to the facility, patient medical records, and a list of current patients, without appropriate protection for patient

confidentiality. In the beginning of 2012, the Board of Health will begin the process of approving a permanent regulatory scheme.

A second law that will sunset in 2014, HB 2434, is related to the establishment of the health care exchange and **prohibits plans in the exchange from offering coverage for abortion** except in cases where the life of the woman is endangered or where the pregnancy was the result of rape or incest.

## **WISCONSIN**

### **Defunding Planned Parenthood**

AB 40 **defunds Planned Parenthood** and other health care facilities that perform or refer for abortions, limiting women's access to a range of reproductive health services, such as birth control, Pap smears, and cancer screenings. This provision will disproportionately harm low-income and uninsured women, as Planned Parenthood is often the only provider able to offer them these needed services.

# REPRODUCTIVE HEALTH AND RIGHTS VICTORIES IN 2011

## ANTI-SHACKLING LEGISLATION

Shackling of pregnant incarcerated women during labor and delivery, as well as during transport to and from medical facilities, is a common practice in many jurisdictions in the United States. It is cruel and degrading, inflicting pain and humiliation on pregnant women. Despite the prohibition of the practice by the federal Bureau of Prisons and its condemnation by two major American medical organizations, shackling persists in state and local jails and prisons, as well as facilities where immigrants are detained.

This practice is a clear violation of human rights that has drawn international attention. The United Nations body of human rights experts that monitors compliance with the International Covenant on Civil and Political Rights, a human rights treaty to which the U.S. is a party, has expressed concern about the shackling of pregnant incarcerated women and urged the U.S. to prohibit the practice.<sup>1</sup> In addition, the U.N.'s Special Rapporteur on violence against women has concluded that this use of restraints on pregnant women violates international human rights standards and "may be said to constitute cruel and unusual practices."<sup>2</sup>

Fortunately, as a result of advocacy in the states, legislators are becoming increasingly aware that shackling of pregnant women during labor is a violation of human rights. In 2011, four states enacted laws to prohibit the shackling of pregnant incarcerated women during labor. Hawaii (SB 219), Idaho (HB 163), Nevada (AB 408), and Rhode Island (HB 5257/SB 165) join the nine others that passed similar laws over the past few years (Colorado, Illinois, New Mexico, New York, Pennsylvania, Texas, Vermont, Washington, and West Virginia), making a total of 13 states with laws on the books to prevent this degrading treatment of pregnant women.

## MINORS' RIGHTS

While many states this year sought to restrict the scope of minors' rights to make their own medical decisions regarding abortion or contraceptives, two states enacted laws that will expand the rights of minors to consent to medical treatment without parental consent. In California, AB 499 allows minors to consent to medical treatment for the prevention of sexually transmitted diseases. In Utah, HB 13 amends existing law to allow certain minors to consent to immunizations, such as the HPV vaccine, without parental consent. Laws that expand minors' ability to consent to medical treatment and health care are important not only for their practical impact, but also in continuing to underscore that young women are competent to make their own health care decisions, whether the decision deals with contraception, abortion, STI treatment or pregnancy.

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<sup>1</sup> *Concluding Observations of the Human Rights Committee: United States of America*, 87th Sess., para. 33, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (2006).

<sup>2</sup> Report of the Mission to the United States of America on the Issue of Violence against Women in State and Federal Prisons, 55th Sess., paras. 53–54, 55–63, U.N. Doc. E/CN.4/1999/68/Add.2 (Jan. 4, 1999).

## OTHER LEGISLATIVE VICTORIES

This year, Arizona passed a law (SB 1121) that requires its Department of Health Services' child fatality review team to evaluate the incidences and causes of maternal mortality in the state.

New Jersey passed a law (SB 972) that clarifies that sexual assault victims will not be charged any fee for services associated with a forensic sexual assault examination, including emergency contraception.

Oregon passed two laws this year that aim to improve maternal health in the state. HB 2235 creates the Maternal Mental Health Patient and Provider Education Program, whose goal is to identify and address maternal mental health disorders and to prevent the associated long-term negative outcomes from the disorders that result for women, children, and families. The law also authorizes the program to develop informational materials for health care providers who serve pregnant and postpartum patients.

HB 3311 requires the Oregon Health Authority to explore options for providing or utilizing doulas (a non-medical person who supports a woman during pregnancy) in the state medical assistance program to improve birth outcomes for women who face a disproportionately greater risk of poor birth outcomes.

Finally, this year, each house in the Vermont legislature passed a resolution (HR 4 and SR 6) commemorating the 38th anniversary of *Roe v. Wade* that "reaffirms the right of every Vermont woman to privacy, autonomy, and safety in making personal decisions regarding reproduction and family planning."

[www.reproductiverights.org](http://www.reproductiverights.org)