

February 22, 2013

**VIA FEDERAL EXPRESS AND ELECTRONIC MAIL**

The Honorable Mike Beebe  
Governor of Arkansas  
State Capitol Room 250  
Little Rock, AR 72201

**Re: Senate Bill 134**

Dear Governor Beebe:

The Center for Reproductive Rights strongly opposes Senate Bill 134 and urges you to veto this measure. This bill is blatantly unconstitutional and would be one of the most extreme abortion laws passed in this country since *Roe v. Wade* was decided by the Supreme Court in 1973. Senate Bill 134 will endanger the health of pregnant women in Arkansas, who have a constitutional right to access the essential reproductive healthcare that it bans, and will prevent physicians in Arkansas from exercising their best medical judgment in caring for their patients.

The Center for Reproductive Rights is a non-profit 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 have litigated cases all over the United States that secure the rights of women to have safe and legal abortions, including in Arkansas. Senate Bill 134 would violate the United States Constitution both because it bans abortion early in pregnancy long before the state has the right to do so and because it fails to adequately protect women's health either before or after viability.

**I. SB 134 Is an Unconstitutional Ban on Abortion**

SB 134 violates long and clearly-established constitutional precedent prohibiting states from banning abortion prior to viability. This bill bans abortions in Arkansas after twelve weeks of pregnancy, beginning in the first trimester, with exceptions only to save the life of a woman, in cases of rape and incest, or in certain, narrowly defined medical emergencies.

Abortion is one of the most common surgical procedures sought by women in America. In fact, by the age of forty-five, approximately one in three women in this country will have had an abortion.<sup>1</sup> Women seeking abortions come from all types of social, economic, and cultural

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<sup>1</sup> Guttmacher Institute, An Overview of Abortion in the United States, <http://www.guttmacher.org/media/presskits/2008/01/12/abortionoverview.html> (last visited April 18, 2012).

backgrounds; most are mothers, more than half identify as religious,<sup>2</sup> some are students working towards a college degree, while others are low-income and struggling to put food on their table for their families.<sup>3</sup> Women seek abortions for many reasons: some choose 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.

For forty 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.<sup>4</sup> 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."<sup>5</sup>

Specifically, the Court has repeatedly held that the Constitution prohibits a state from enacting a law that bans abortion prior to the point in pregnancy when a fetus is viable.<sup>6</sup> 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."<sup>7</sup> The Supreme Court has never wavered from this position, despite numerous opportunities to do so.<sup>8</sup> By completely banning abortions during and after the first trimester, SB 134 directly conflicts with all U.S. Supreme Court precedent on abortion.

## II. SB 134 Unconstitutionally Fails to Protect Women's Lives and Health

This bill prohibits a physician from performing an abortion after twelve weeks in almost all circumstances. Senate Bill 134 contains an extremely narrow "medical emergency exception" for abortions performed after twelve weeks, permitting them only when an abortion is necessary to avert death or a "serious risk of substantial and irreversible impairment of a major bodily function," or for "highly lethal fetal disorders." However, the Supreme Court has made it

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<sup>2</sup> Guttmacher Institute, Facts on Induced Abortion in the United States 2011, [http://www.guttmacher.org/pubs/fb\\_induced\\_abortion.html](http://www.guttmacher.org/pubs/fb_induced_abortion.html) (last visited February 11, 2013).

<sup>3</sup> *Id.*; see also Lawrence B. Finer, *Unintended pregnancy in the United States: incidence and disparities*, 2006, 84 *Contraception*, 478 (2011).

<sup>4</sup> 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 v. Wade*, 410 U.S. 113, 163-64 (1973).

<sup>5</sup> *Casey*, 505 U.S. at 854.

<sup>6</sup> See *Roe*, 410 U.S. at 163-64; *Planned Parenthood of S.E. Pa.*, 505 U.S. at 860, 879.

<sup>7</sup> *Planned Parenthood of S.E. Pa.*, 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.")

<sup>8</sup> In *Gonzales v. Carhart*, the most recent Supreme Court case on abortion, the law at issue did not ban abortions in general or abortions at any particular point in pregnancy. 550 U.S. 124 (2007). Rather, it banned only *one abortion procedure*. Although the Supreme Court upheld that law, the Court emphasized that safe alternative abortion procedures were available at all times and in all cases and explained that its decision was fully consistent with past precedent. *Id.* at 163-64.



clear that no state may ban abortion prior to viability, regardless of the exceptions included in the law.<sup>9</sup>

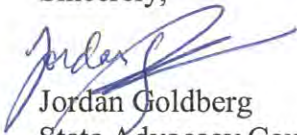
Moreover, the narrow “medical emergency exception” included in SB 134 would be unconstitutional at any stage of pregnancy because it does not adequately allow physicians to exercise their medical judgment to protect women’s health. Since recognizing the constitutional right to choose an abortion, the Supreme Court has consistently held that even though a state may ban abortion *after* viability, any such ban must make an exception when an abortion “is necessary, in appropriate medical judgment, for the preservation of the life *or health*” of the woman. The Court has never upheld a “health exception” as narrow as the medical emergency exception contained in this bill.

Finally, as several physicians testified during the legislative process, this bill penalizes doctors for providing basic medical care for women, putting both women and doctors at risk. This is both an unconstitutional and extremely harmful policy.

### III. Conclusion

SB 134 is an unconstitutional ban on abortion beginning in the first trimester. The bill disregards women’s fundamental right to determine when and whether to have children, poses a serious risk to women’s health, and prohibits physicians from practicing medicine within the bounds of medical ethics and standards. We urge you to veto this attempt to violate the constitutional rights of women in Arkansas. Please do not hesitate to contact us if you would like further information.

Sincerely,



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<sup>9</sup> *Casey*, 505 U.S. at 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 made for particular circumstances, a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability.”).