



April 20, 2021

**Testimony of Lauren Bramwell
OPPOSE: HB 366
April 20, 2021
Before the Senate State Affairs Committee**

Madam Chair and Members of the Committee:

The ACLU of Idaho strongly opposes HB 366. If “triggered,” this bill would ban abortion long before the point of viability and would undermine a pregnant person’s ability to make personal and private decisions that should be left to the pregnant person, their family, and their doctor. This bill both inserts unnecessary political interference in the practice of medicine and is unconstitutional.

The bill would serve as an outright ban on abortion for most pregnant people.

Embryonic cardiac activity can be detected as early as six weeks from a person’s last menstrual period. In contrast, viability – typically defined as the ability of a fetus to survive outside the womb with or without artificial support – does not occur until approximately twenty-four weeks from the last menstrual period. Thus, so-called “heartbeat”¹ bans operate as unconstitutional pre-viability abortion bans and, in many cases, effectively acts as a complete ban on abortion.

Six weeks from a person’s last menstrual period, most people do not even know they are pregnant. A number of factors other than pregnancy can cause a late period. Moreover, people may have irregular periods for a myriad of reasons, including certain medical conditions or the use of contraceptives. People can also experience light bleeding early in pregnancy, which can be mistaken for a period.

Even when a person has quickly identified a missed period, a six-week ban would only allow them two weeks, at most, to decide whether to have an abortion and to seek and obtain abortion care – including raising the money, getting permission for time off work, securing transportation, setting up child care if needed, and complying with Idaho’s mandatory waiting period. Accordingly, this legislation poses a particularly unobtainable timeline for low-income, rural Idahoans.

This bill will prohibit health care providers from providing ethical, necessary care to their patients.

The American College of Obstetricians and Gynecologists, the largest professional organization for doctors specializing in women’s health, opposes fetal heartbeat legislation because it “places physicians in an impossible position between the law and providing evidence-based, individualized, and medically

¹ The term “fetal heartbeat” is a misnomer. First, cardiac activity can be detected before a fully-functioning heart has formed. Second, this activity can be detected during the embryonic stage of pregnancy, i.e., before an embryo has developed into a fetus.

necessary care to their patients.”² Decreasing access to abortion will likely increase negative health outcomes and complications, including maternal mortality.³ While the legislation offers a medical emergency exception, the definition is vague and will require physicians to navigate an uncertain legal framework of what “necessitates” an “immediate abortion,” and what constitutes a “substantial and irreversible impairment of a bodily function.” For example, is a rupture of membranes, without infection, serious enough to sanction intervention, or must the physician wait until the pregnant person becomes ill from infection to avoid criminal liability?

HB 366 is particularly harmful to survivors of sexual violence.

This morning, numerous organizations and members of the community submitted a joint letter in opposition to HB 366, noting how the legislation is particularly harmful to survivors of sexual violence. Organizational signees included the Family Safety Network, the Idaho Coalition, Add the Words, Legal Voice, ACLU of Idaho, Planned Parenthood, The Idaho Indigenous Alliance, The Northwest Abortion Access Fund, and YWCA of Lewiston.

This iteration of the 6-week abortion ban (previously SB 1085), deliberately narrows the rape & incest exemption so that survivor would be required to report to law enforcement in order to qualify for the exemption. This amendment was made without any consultation with survivors or advocates against intimate partner violence.

Mandatory reporting requirements deny the realities & lived experiences of survivors. Many do not feel safe reporting to police or do not want to involve the criminal legal system. 1183 also would also require survivors to obtain a medically unnecessary trans vaginal ultrasound in order to exercise their constitutional right to abortion care.⁴ This too, will compound trauma experienced by someone who is raped and becomes pregnant. Trans vaginal ultrasounds require insertion of an ultrasound probe. While there are instances where that procedure is medically necessary— it is another issue entirely when it is a procedure required only because the state says so.

This bill is unconstitutional.

It goes without saying that this legislation is unconstitutional, as acknowledged by the fact that there is a

² The American College of Obstetricians and Gynecologists. “ACOG Opposes Fetal Heartbeat Legislation Restricting Women’s Legal Right to Abortion.” (Jan 18, 2017) <https://www.acog.org/news/news-releases/2017/01/acog-opposes-fetal-heartbeat-legislation-restricting-womens-legal-right-to-abortion>

³ See e.g. Freedman, L. R., Landy, U., & Steinauer, J. (2008). When there’s a heartbeat: miscarriage management in Catholic-owned hospitals. *American journal of public health*, 98(10), 1774–1778. <https://doi.org/10.2105/AJPH.2007.126730>

⁴ The issue is that at very early stages of pregnancy a regular abdominal ultrasound doesn’t provide a clear picture of the fetus, requiring instead an invasive transvaginal ultrasound.



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trigger provision in the bill. Not a single fetal heartbeat ban has survived a legal challenge.⁵ The bill undermines pregnant people's rights under the federal constitution and is out of line with judicial precedent.

For these reasons, we ask you to oppose HB 366.

⁵ See e.g. *Edwards v. Beck*, 786 F.3d 1113 (8th Cir. 2015), cert. denied, 136 S. Ct. 895 (2016); *SisterSong Women of Color Reprod. Justice Collective v. Kemp*, No. 1:19-cv-02973-SCJ, 2020 WL 3958227 (N.D. Ga. July 13, 2020).

For questions or comments, contact Lauren Bramwell, Policy Strategist, at 208-344-9750 x1204.

Sexual Assault Survivors & Advocates against Intimate Partner Violence: An Open Letter in Opposition to HB 366

We are survivors, families and loved ones of survivors, community-based advocates, attorneys, civil rights advocates, clinicians, healthcare providers, and social workers working with survivors of gender-based violence. Collectively, we have decades of experience working to eradicate gender-based violence and to meet the immediate and long term needs of survivors.

It is because of this collective knowledge and experience that we stand in firm opposition to legislation that places additional burdens on survivors to offer “proof” or “verification” that a sexual assault occurred in order to obtain an abortion after a fetal heartbeat is detected.¹

In order to obtain an abortion after a provider detects embryonic cardiac activity, a sexual assault survivor would be forced to engage in a time-consuming and emotional process. HB 366 would require those seeking an exemption to report to law enforcement and provide a copy of the report to the physician who is to perform the abortion. This requirement is problematic for a myriad of reasons. First, it is incredibly difficult, if not impossible, for a survivor of sexual assault to obtain a report because police will not release reports during active investigations. Secondly, applying for an exemption asks victims to undertake an onerous process that can compound the trauma of being raped and becoming pregnant. The obligation to show “proof” of rape or incest places an additional burden on survivors and implicitly suggests that the survivor’s version of the events cannot be believed without verification from the state.

Additionally, mandatory reporting requirements fail to take into account that many survivors of intimate partner violence do not wish to report their assault to law enforcement and do not want to involve the criminal legal system. Many survivors report feeling blamed, disgraced, defamed, or too ashamed to report their sexual victimization.² Furthermore, a survivor’s relationship with the offender may also influence their decision on whether or not to report. According to 2010 CDC report, more than half (51.1%) of female victims of rape reported being sexually assaulted by an intimate partner and 40.8% by an acquaintance.³ Survivors of intimate partner violence may not involve the police due to a desire for privacy,⁴ concern for their children, or because

¹ Embryonic cardiac activity can be detected as early as six weeks from a person’s last menstrual period, i.e. two weeks after a missed period.

² “Too Ashamed to Report: Deconstructing the Shame of Sexual Victimization” Weiss, Karen G. *Feminist Criminology*, July 2010.

³ Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M.R. (2011). *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (Feb. 11, 2021).

⁴ National Domestic Violence Hotline, *Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses*. Washington, DC (2015). <http://www.thehotline.org/resources/law-enforcement-responses>

they believe that calling the police will only make things worse.⁵ Other survivors report that they are afraid to involve the criminal legal system because they don't think they will be believed, or they think their abuser will just get a "slap on the wrist."⁶ For example, in Idaho, not all forms of spousal rape are currently criminalized.⁷ These variables may all factor into a person's decision not to report.

Mandatory reporting requirements also fail to acknowledge that many survivors, particularly survivors from communities of color, do not feel safe reporting to police. According to a study from the National Coalition of Anti-Violence Programs, transgender people of color were 6 times more likely to experience physical violence from the police compared to white cisgender survivors and victims. The intersection of racism and transphobia can make survivors and victims more vulnerable to violence and more likely to experience discrimination and violence from direct service providers and law enforcement.⁸

In sum, this legislation fails to acknowledge the realities that survivors of sexual violence experience. The amendment from the previous iteration of this bill (SB 1085) was deliberate, and without any consultation with survivors of sexual violence or advocates against intimate partner violence. This lack of consultation shows a disregard for survivors and their lived experiences.

We must do better for survivors of gender-based violence and their families. That means bringing survivors and advocates against intimate partner violence to the policy making table and ensuring access to abortion services, regardless of whether or not the survivor chooses to report their assault to police.

⁵ *Id.*

⁶ *Id.*

⁷ See Idaho Code §18-6107.

⁸ National Coalition of Anti-Violence Programs. *Hate Violence Against Transgender Communities*. https://avp.org/vvp-content/uploads/2017/04/ncavp_transhvfactsheet.pdf (Retrieved Feb. 11, 2021).

ORGANIZATIONS

Family Safety Network

YWCA of Lewiston

Idaho Coalition against Sexual & Domestic Violence

Idaho Indigenous Alliance

Add the Words

Legal Voice

ACLU of Idaho

Northwest Abortion Access Fund



**Idaho
Coalition**
Against Sexual &
Domestic Violence
Engaging Voices, Creating Change



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Annette Harker	D33, Ehardt, Erickson & Lent	
Ada Fryer	District 1	
Mary Smith	District 1	
Kristen Luna	District 10	
Britanee Ballardo	District 10	
Kailey Carter-Zitterkopf	District 13	
Deirdre Ford	District 13	
Rosseli	District 15	
Sierra McIver	District 15	
Allison Adams	District 15	
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Lauren Bramwell	District 17	
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Kristi Coffman	District 17	
The Rev. Joseph Farnes	District 17	
Isabel Porter	District 18	
Lexi Stolz	District 18	
Adrienne Kilekas	District 18	
Brian Millar	District 18	
Nolan Gillies	District 19	
Norelle Bond	District 19	
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