



December 6, 2017

RE: Senate Bill 3

Dear members of the Pennsylvania House of Representatives,

The Women's Law Project is a public interest legal organization with expertise in reproductive health law and policy. We have represented abortion providers in Pennsylvania since the 1970s.

We urge you to vote against Senate Bill 3.

Senate Bill 3 seeks to criminalize almost all abortion by any method after 19 weeks' gestation, with no exceptions for rape, incest, or fetal anomaly, including unviability. In addition to making abortion after 19 weeks a felony, SB 3 also criminalizes a procedure referred to in the bill as "dismemberment abortion." No medical procedure exists by that name. It would likely ban a procedure known as dilation and evacuation or "D&E," at any stage of pregnancy.

Under well-established constitutional standards, SB 3 is blatantly unconstitutional.

Banning abortion after 19 weeks' gestation is unconstitutional.

For 44 years, the U.S. Constitution has prohibited states from banning abortion before fetal viability. Every time a pre-viability ban has been challenged in court, it has been blocked from going into effect under Supreme Court precedent.

The Supreme Court has repeatedly held that viability is a matter best left to the doctor's medical judgment. Obstetrician-gynecologists recognize the threshold of viability to be no earlier than the 24th week of gestation.

SB 3 has a narrow health exception: it would not be illegal for a physician to perform an abortion after 19 weeks if the physician "reasonably believes that it is necessary to prevent either the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the woman."

SB 3's narrow exception would require women to sustain damage to their health, even serious damage, that is "irreversible" but not "substantial," that is "substantial" but not "irreversible," and that is both "substantial and irreversible" but that does not impair a "major" bodily function. SB 3 is unconstitutional because its health exception is too narrow and would make it illegal for doctors to give women medical care they need to save them from damage to their health. There is no exception for rape, incest, or fetal anomaly.

The 2016 landmark U.S. Supreme Court decision in *Whole Woman's Health v Hellerstedt* invalidated legislation similar to SB 3 because it imposed an undue burden on women's access to abortion and provided "few, if any, health benefits for women."

SB 3 would, according to medical experts, be worse than providing "few, if any, health benefits for women." SB 3 would inflict great harm on the health of Pennsylvania women, according to the Pennsylvania section of the American Congress of Obstetricians and Gynecologists (ACOG), the Pennsylvania Medical Society, Pennsylvanians for Reproductive Health, and scores of OB-GYN doctors.

Criminalizing D&E is unconstitutional.

Even prior to *Hellerstedt*, in case after case, the Supreme Court had already ruled that abortion "method bans" that eliminate safe, common abortion procedures for no medical purpose are unconstitutional.

The D&E procedure is the safest and most commonly used midterm abortion method. It is sometimes used in the first trimester. The alternative procedure SB 3 seemingly leaves open—induction abortion—is not a comparable alternative to D&E abortion and provides no medical benefit for most women. The Supreme Court has already recognized that the D&E method is generally safer than other methods in the mid-second trimester.

Should this bill become law, it will be subject to a legal challenge. For more legal analysis, please see [this memo](#) detailing our complete legal analysis of SB 3.

Conclusion

Instead of forcing unconstitutional bills that would endanger women's lives, the Legislature should consider advancing long neglected legislative proposals that would actually support healthy pregnancies.

Right now for example, in most of Pennsylvania, a pregnant worker can be fired over requesting to keep a water bottle at her work station, even if it is her doctor's orders.

While pursuing unconstitutional abortion bans, Pennsylvania lawmakers have even ignored legislative efforts to decrease infant mortality by ensuring new mothers have a sanitary place to express breastmilk while at work.

We urge to vote against SB 3.

Very truly yours,

A handwritten signature in black ink that reads "Carol E. Tracy". The signature is written in a cursive style with a prominent loop at the end of the last name.

Carol E. Tracy, Executive Director

Women's Law Project

A handwritten signature in black ink that reads "Susan Frietsche". The signature is written in a cursive style with a prominent loop at the end of the last name.

Susan Frietsche, Senior Attorney

Women's Law Project