ACLU Georgia

Testimony in Opposition to House Bill 481

Sean J. Young
Legal Director
ACLU of Georgia

March 14, 2019

My name is Sean Young, and I am the Legal Director of the ACLU of Georgia. The ACLU of Georgia opposes HB 481, because the government should never tell a woman or a couple when to start or expand a family.

But HB 481 is also unconstitutional—courts in North Dakota, Arkansas, Arizona, Ohio, Utah, Louisiana, Guam, and Mississippi have all struck down similar bans.

HB 481 is unconstitutional because it bans abortions months before the point of viability. Under nearly 50 years of clear and binding Supreme Court precedent, a state cannot ban abortions prior to viability, defined as having "a reasonable likelihood of sustained survival outside of a woman's uterus, with or without artificial aid." It is undisputed, and scientifically indisputable, that a 6-week embryo lacks any reasonable likelihood of sustained survival outside a woman's uterus, whether or not there is cardiac activity.

HB 481's lengthy "findings" change nothing. As it would be absurd to assert that viability could occur at 6 weeks, the Findings insist instead that cardiac activity signifies a "viable intrauterine gestation." (Findings ¶¶ 11, 18.) But as the Findings themselves reflect, that means merely that if the woman remains pregnant another 8 months, she will very likely give birth: the Findings refer to a "95 percent chance of survival *when carried to term*." (Findings ¶ 18.) That is not breaking news; does not establish that viability could occur anywhere near as early as 6-weeks; and cannot save this blatantly unconstitutional bill. The legislature's attempt to redefine viability as contiguous with the onset of cardiac activity is, frankly, too cute by half.

When you cut through all the jargon in HB 481, it basically says, "We don't like the Supreme Court's definition of viability, so we're just going to redefine it to mean 6 weeks." (Findings ¶¶ 12, 17, 19.) That's like saying, "We don't like the Supreme Court's prohibition on racial discrimination, so we're just going to say that firing people based on the color of their skin is not racial discrimination." Courts will see through that in a second.

Legislators don't get to rewrite the U.S. Constitution because they find it incompatible with their own religious beliefs. The government should never tell a woman or a couple when to start or expand a family especially based on another person's interpretation of Scripture or other religious text.

Passing this bill today could cost Georgia taxpayers hundreds of thousands, if not millions of dollars, in attorneys' fees that will be paid out of the state treasury when the federal courts strike down this blatantly unconstitutional law. Hardworking Georgians prefer to see their tax dollars spent on public education, transportation, and public safety rather than wasted on defending unconstitutional laws.

This committee should trust Georgia's women and couples to make these deeply personal and sometimes difficult decisions. The ACLU of Georgia urges you to vote no on HB 481.