



Forced-Ultrasound Legislation is an Egregious Intrusion into Medical Care

The Ultrasound Informed Consent Act (H.R.492), sponsored by Rep. Jeff Duncan (R-SC), effectively mandates that all women seeking abortion services undergo an ultrasound, even if not medically necessary, and even if it is against a woman's will.

At first, this proposal might sound innocuous, or even beneficial. However, a closer look reveals that the legislation is an egregious and unprecedented federal intrusion into medical care – and is, at its core, designed to intimidate, shame, and harass women who seek to exercise their constitutionally protected right to choose. The legislation would require medical professionals to perform an ultrasound on any woman seeking abortion services, display the images, and then orally describe the images to the woman – even if she directly objects. Sadly, the proposal has no exception from this mandate for cases of rape, incest, or severe emotional distress.

While an ultrasound can be an important tool for doctors *when used for medically necessary reasons*, no medical procedure should be used to coerce or harass a patient – and forced-ultrasound legislation does just that.

Ultrasound Laws in the States¹

Separate from federal legislation, 25 states currently have some type of ultrasound provision on the books; the laws vary in severity.

- Five states mandate that medical professionals perform an ultrasound on any woman seeking abortion care and display or describe the image: LA, NC, OK, TX, and WI.
- The measures in North Carolina and Oklahoma are permanently enjoined. There are nine states that require medical professionals to provide any woman seeking abortion care with the opportunity to view an ultrasound image *if* her provider performs the procedure as part of an abortion: AR, GA, ID, MI, NE, OH, SC, UT, and WV.
- Ten states require that a woman be provided with an opportunity to view an ultrasound image whether or not the woman requests to do so: AL, AZ, FL, IN, KS, MS, NC, OH, OK, and VA.
- Ten states require that a woman be provided with an opportunity to listen to the fetal heartbeat: AZ, GA, IN, KS, MS, MO, NC, TX, VA, WI.

Forced-Ultrasound Legislation Distorts the Principle of Informed Consent

Informed consent is a bedrock principle in medical ethics. It ensures that medical professionals explain the nature of a procedure or treatment, as well as the risks and alternatives available, and then obtain consent from a patient before proceeding with treatment. Anti-choice lawmakers claim that forced-ultrasound bills are somehow related to the principle of informed consent, but such a notion could not be further from the truth.

- **Mandating any medically unnecessary procedure runs directly counter to the spirit of informed consent.**
 - As a point of reference, an ultrasound is not medically necessary for most women seeking abortion services. In fact, for safety reasons, the American College of Obstetricians and Gynecologists has recommended that ultrasound be used only for medical purposes.² These initiatives, which require doctors to perform this procedure for political reasons, directly contravene this recommendation.
 - If the proposals were truly aimed at achieving informed consent or giving women “information” about their pregnancies, they would apply to all pregnant women. Tellingly, however, they target only those women who have decided to terminate their pregnancy.
 - Absent any bona fide medical necessity to mandating ultrasounds for women seeking abortion services, the overarching goal of these proposals seem only to be a thinly veiled attempt to intimidate, shame, and coerce women against accessing safe, legal abortion.
- **Forcing patients into medical procedures against their will turns the principle of informed consent on its head.**
 - These pieces of legislation contain a provision that sponsors will undoubtedly claim gives women a right to refuse to view the ultrasound. Any such claim would be utterly false. As described in the bills, a medical professional *must* (1) perform an ultrasound, (2) provide an explanation of the results of the ultrasound, (3) display the images so that the pregnant woman may view them, and (4) “provide a medical description of the ultrasound images” – even if a woman refuses or protests.
 - It is true that the woman cannot be forced to view the images, however, with these provisions, she cannot escape or shield herself from the verbal recitation of

the images (except in very few circumstances).³ This unsettling reality turns the principle of informed consent on its head, supplanting information for harassment and propaganda.

Forced-Ultrasound Laws Funnel Women to Anti-choice Crisis Pregnancy Centers

Forced-ultrasound laws have another dangerous effect: they help anti-choice facilities called crisis pregnancy centers lure women into their offices.

Crisis pregnancy centers (CPCs) are anti-choice facilities that often pose as comprehensive health-care centers. But once a woman walks in the door, she likely will be met with lies, misinformation, and scare tactics, all designed to block her from considering abortion as an option⁴.

And more and more often now, many CPCs are acquiring and touting ultrasound equipment. In the CPC setting, however, ultrasound is generally not used as a diagnostic tool, but as another means of shame and coercion. Forced-ultrasound laws abet this strategy in three ways:

- **Deceptive answers on the phone.** Many CPC activists tell callers that ultrasounds are the first step toward getting abortion care.⁵ Forced-ultrasound laws bolster this sales pitch—a CPC can tell a woman that by law, she will *have* to have an ultrasound. At a recent CPC conference, a trainer told the audience: “One of the things that I encourage people when women ... ask ‘do you provide abortion services?’ ...say something like this: ‘No, we do not provide abortion services, but we *do* provide *ultrasounds*. And you’re going to need to have an ultrasound before you have your abortion. So you can come in here and you can get your ultrasound done for free. Because you’re gonna have to have it anyway when you have an abortion.’”⁶ That alone gets a woman in the door of a CPC, which is their number one goal.
- **Funneling women directly to CPCs.** A growing number of forced-ultrasound laws funnel women to CPCs directly by requiring that states create and maintain registries of CPCs and force providers to present or offer such lists to women seeking abortion care and free ultrasounds.
- **Exploiting low-income women.** Forced-ultrasound laws also disproportionately affect low-income women. They increase the cost of the procedure by forcing the woman to also pay for the cost of the ultrasound. Because most CPCs provide services free of charge, this additional cost burden makes CPCs even more appealing.

Public Polling Shows Lack of Support for Forced-Ultrasound Laws

Contrary to anti-choice efforts in the states to enact forced-ultrasound legislation, voters generally do not support this approach.

- In March 2012, when anti-choice Virginia Gov. Bob McDonnell signed the state's forced-ultrasound bill into law, his approval rating dropped five percentage points. Of Virginia voters, 52 percent disapproved of the bill, joined by a whopping 72 percent of voters who believe the government should not make laws that try to convince women seeking an abortion to change their minds.⁷
- In a subsequent poll in May 2012, more than 50 percent of voters opposed the forced-ultrasound law, with men and women opposing it in nearly equal numbers. Gov. McDonnell's approval ratings were still feeling the effects of the forced-ultrasound law, with ratings lower than he had seen in the previous year, as well as a drop in support from independent voters and women. One Virginia resident stated she was generally pleased with McDonnell's performance except for his support of the ultrasound law, which she opposes, "I believe in women's rights. I don't see why they should have to jump through hoops that are put into law by the government that we're being overrun by."⁸
- Another poll conducted in Illinois found similar sentiment amongst voters: two-thirds of respondents opposed a forced-ultrasound measure.⁹

Forcing a Woman to View an Ultrasound Image Doesn't Change Her Mind About Abortion

Forced-ultrasound procedures are so insulting because they assume women are not thoughtful in their decision to seek abortion care—that somehow an ultrasound image will shame them into changing their minds. But in fact, research confirms what has anecdotally been known to be true within the pro-choice community: forcing a woman to look at an ultrasound image does not make her change her mind about getting an abortion. Examining the decisions of over 15,500 women seeking abortion care, of women who viewed the ultrasound image, more than 98 percent received the procedure. A subsequent study evaluated the experiences of ultrasound providers and whether the ultrasound dissuaded women from going ahead with their abortion procedure, and found that very few women changed their minds.¹⁰

To be clear, NARAL Pro-Choice America supports ultrasound procedures when requested by the woman or recommended by her doctor. In circumstances in which a woman is uncertain about her decision, she should be afforded all of the information necessary to make the decision. However, in forced-ultrasound laws, the sonograms are not being used to support women or help them educate themselves, but rather to shame her and second-guess her decision.¹¹

Forced-Ultrasound Bills Have Other Significant Defects That Threaten Access to Abortion

- **The bills have no exception for rape, incest, or extreme emotional distress.**
 - The bills' claimed "health exception" is absolutely inadequate, failing to include protections for women with very real emotional or physical traumas. For example, each of the women in the following situations would be subject to the forced ultrasound:
 - An 18-year-old college student who survives date rape in her dorm room, even though she tells her doctor that facing an ultrasound would exacerbate her already fragile state of mind.
 - A 13-year-old who was sexually assaulted by her uncle, despite her parents' protests that their daughter – and they – are too emotionally traumatized to witness the images and hear the doctor's descriptions of the pregnancy that resulted from the assault.
 - A 35-year-old married woman who seeks abortion services on the advice of her doctor after learning that the bleeding she experienced in her fifth week of pregnancy signals a fatal problem. Even as she pleads with the ultrasound provider to stop describing the desperately wanted pregnancy she is about to lose, the bill does not permit an exception.
- **The bills are yet another attempt to harass doctors who provide abortion services and expose women's private medical records to the roving eyes of the Department of Justice.**
 - Under the proposals, a doctor who determines that an ultrasound is harmful to a patient's treatment may be subject to civil charges in federal court by the U.S. attorney general, as well as a private cause of action that could include punitive damages.
 - More troubling, an anti-choice attorney general could use these bills to force health centers to release their patients' private medical records – even those wholly unconnected with an investigation – to the Department of Justice to begin a fishing expedition to gather information about women who seek legal abortion services. This situation is not without precedent: in 2004, John Ashcroft's Department of Justice embarked on a vindictive fishing expedition in which it attempted to subpoena thousands of medical records from women who had sought abortion care.¹²

- **By imposing additional costs on patients and reproductive-health providers, the bills would make abortion services less affordable – and thus, less accessible.**
- Reproductive-health centers, like other health clinics, do not uniformly keep expensive ultrasound equipment at every site. However, the pieces of legislation would mandate that health centers purchase the expensive equipment as a prerequisite to providing legal abortion care – a cost that could out of necessity be passed along to patients.
- Sadly – and likely intentionally – such a requirement would be yet another deterrent to physicians who might otherwise be able and willing to provide safe abortion care. Unfortunately, this is not a hypothetical situation for many women: already 89 percent of U.S. counties have no abortion clinic.¹³
- Moreover, should either of the bills become law, women could incur even greater out-of-pocket costs when seeking abortion services. For low-income women already facing financial restraints, the added cost of a medically unnecessary procedure could mean further barriers to medical care.

In Their Own Words

Supporters of forced-ultrasound bills admit that the true purpose of their strategy is to coerce women against exercising their right to choose.

- Describing the bill, the anti-choice Family Research Council said: “When confronted with [ultrasound images], research shows that many women reconsider their ‘choice’ to abort.... While the legislation doesn’t address abortion directly, it’s certainly an effective way to reduce the number of them.”¹⁴
- When the Texas state legislature considered a similar measure in 2007 that would have forced a woman to review an ultrasound against her will, the bill’s sponsor, state Sen. Dan Patrick, remarked: “I’m interested in protecting the lives of the unborn and giving a woman an option before she makes that fatal choice for that fetus, for that baby, to look at that ultrasound ... [t]hat might persuade her to save that life.” Fortunately, this measure did not move out of committee.¹⁵
- Life News, another anti-choice organization, explained “[t]he hope” of the Brownback proposal “is that it will persuade many women” against exercising their right to choose.¹⁶
- Teresa Donovan, former director of a “crisis pregnancy center” in Massachusetts, explained her view of women who exercise their right to choose this way: “The

fact that the ultrasounds don't necessarily create 100% turnaround speaks to the power of utilitarian ethics or moral relativism."¹⁷

January 1, 2016

Notes:

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- ¹ In addition to internal analysis, data from this section is complemented with data from: Guttmacher Institute, *State Policies in Brief: Requirements for Ultrasound* (Oct. 1, 2014) at http://www.guttmacher.org/statecenter/spibs/spib_RFU.pdf (last visited Dec. 11, 2015).
- ² The American College of Obstetricians and Gynecologists, Committee on Ethics, *Committee Opinion: Nonmedical Use of Obstetric Ultrasonography* (Aug. 2004) Reaffirmed 2012, at <http://www.acog.org/-/media/Committee%20Opinions/Committee%20on%20Ethics/co297.pdf?dmc=1&ts=20120330T1440211948> (last visited on Dec. 11, 2015); The Wall Street Journal, *Pregnant Women Get More Ultrasounds, Without Clear Medical Need*, July 17, 2015, at www.wsj.com/articles/pregnant-women-get-more-ultrasounds-without-clear-medical-need-1437141219?mod=rss_Health (last visited on Dec. 11, 2015).
- ³ See *supra* 1.
- ⁴ For more information about crisis pregnancy centers, see NARAL Pro-Choice America's fact sheet, *The Truth About Crisis Pregnancy Centers*.
- ⁵ RH Reality Check, *Abby Johnson Explains To CPCs How To Use Forced Ultrasound Bills To Lie and Get Women In the Door*, April 8, 2012, at <http://www.rhrealitycheck.org/article/2012/04/08/abby-johnson-explains-to-cpcs-how-to-lie-to-get-women-in-door> (emphasis added) (last visited on Dec. 11, 2015).
- ⁶ See *id.*
- ⁷ The Washington Post, *McDonnell, General Assembly See Approval Ratings Slip in New Poll*, Mar. 21, 2012, at http://www.washingtonpost.com/blogs/virginia-politics/post/mcdonnell-general-assembly-see-approval-ratings-slip-in-new-poll/2012/03/20/gIQABKWRRS_blog.html (last visited Nov. 2, 2014).
- ⁸ The Washington Post, *Virginians Less Optimistic About McDonnell, Direction of State, Post Poll Finds*, May 7, 2012, at https://www.washingtonpost.com/local/dc-politics/virginians-less-optimistic-about-mcdonnell-direction-of-state-post-poll-finds/2012/05/06/gIQAnc9x6T_story.html (last visited Dec. 11, 2015).
- ⁹ Press Release, American Civil Liberties Union of Illinois, *Poll Finds Only One in Three Illinois Voters Support Radical Ultrasound Bill That Harms Women's Health* (Feb. 28, 2012) at <http://www.aclu-il.org/poll-finds-only-one-in-three-illinois-voters-support-radical-ultrasound-bill-that-harms-women%E2%80%99s-health/> (last visited Dec. 11, 2015).
- ¹⁰ Katrina Kimport and Tracy Weitz, *Constructing the Meaning of Ultrasound Viewing in Abortion Care*, *SOCIOLOGY OF HEALTH & ILLNESS*, Vol. 37. Issue 6, Feb. 16, 2015, pp. 856-869; Elissa Strauss, *Does Viewing an Ultrasound Really Make a Woman Less Likely to Have an Abortion?* *Elle*. Oct. 8, 2015.
- ¹¹ Mary Gatter, Katrina Kimport, Diana Greene Foster, and Tracy Weitz, *Relationship Between Ultrasound Viewing and Proceeding to Abortion*, *OBSTETRICS & GYNECOLOGY*, Vol. 123. No. 1, Jan. 2014.
- ¹² See Mark Moran, *Ashcroft's Demand For Abortion Info Lays Siege To Confidentiality*, *American Psychiatric Association, Psychiatric News*, Vol. 39 No. 7 at 1, April 2, 2004 at

<http://psychnews.psychiatryonline.org/doi/full/10.1176%2Fpn.39.7.0001a> (last visited Dec. 11, 2015); ABC News, *Ashcroft Seeks Planned Parenthood Records Justice Department's Subpoenas Include Planned Parenthood Records*, Feb. 26, 2004, at <http://abcnews.go.com/WNT/story?id=131522&page=1> (last visited Dec. 11, 2015).

¹³ Rachel K. Jones and Jenna Jerman, *Abortion Incidence and Service Availability In the United States, 2011*, PERSP. ON SEXUAL AND REPRO. HEALTH, Mar. 2014, 46(1) available at <http://www.gutmacher.org/pubs/journals/psrh.46e0414.pdf> (last visited Dec. 11, 2015).

¹⁴ See, CCNews Portal & Blogs, *Today's Daily Brief*, September 27, 2007, Capitol Hill Prayer Partners (on file with NARAL Pro-Choice America).

¹⁵ Steven Ertelt, *Texas Senate Panel Passes Abortion Bill Allowing Ultrasound Viewing*, LifeNews.com, April 25, 2007, at <http://www.lifenews.com/state2250.html> (last visited Dec. 11, 2015).

¹⁶ Steven Ertelt, *Sam Brownback Introduces Abortion-Ultrasound Bill in the Senate*, LifeNews.com, September 21, 2007, at <http://www.lifenews.com/nat3344.html> (last visited Dec. 11, 2015).

¹⁷ Amy Contrada, *Saving More Babies with Ultrasound; Crisis Pregnancy Centers Have Success Using Pictures*, Massachusetts News, February 2002, at http://www.massnews.com/2002_editions/01_Jan/12302preg.htm (last visited Dec. 11, 2015).