



ACLU of Idaho
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**Testimony of Lauren Bramwell
OPPOSE: SB 1085
February 15, 2021
Before the Senate State Affairs Committee**

Madam Chair and Members of the Committee:

The ACLU of Idaho strongly opposes SB 1085. 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.



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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.”

This bill is unconstitutional.

It goes without saying that this legislation is clearly unconstitutional. This bill cannot survive judicial scrutiny. Even with a trigger provision, 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 SB 1085.

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>